

Mailing Date: NOV 21 2008

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR
PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-3048
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-344628
	:	
JAKE'S LOUNGE INC.	:	
4002 W. GIRARD AVE.	:	LID - 9853
PHILADELPHIA PA 19104-1032	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-1225	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 9, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Jake's Lounge, Inc., License Number R-AP-SS-OPS-1225 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, June 27, 2007, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on December 8, 2006, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items, eating utensils and dishes.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that on December 8, 2006, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Officer J. Kohler is employed by the Bureau of Enforcement and at the time of hearing had been so employed for approximately three and a half years. She was on duty on Friday evening, December 8, 2006. On that date, she visited the licensed premises arriving there at approximately 11:50 p.m. (N.T. 5-6).
2. When Officer Kohler entered the premises, she did so with members of the Citywide Vice Philadelphia Police Department. The officers noted that there was one female rendering service of alcoholic beverages to twenty patrons. The premises was open and operating (N.T. 6-7).
3. Officer Kohler conducted a routine inspection of the licensed premises. Officer Kohler requested that the bartender retrieve records from the premises operation for the past two years. The bartender stated that she did not know the whereabouts of the records (N.T. 7).
4. The bartender got the Licensee on the phone and Officer Kohler was told that he did not keep records on the premises (N.T. 7).
5. The individual on the phone identified himself as Mr. Chislom (N.T. 7-8).
6. The bartender indicated that food is sometimes sold during the day but is never served at night. The refrigerator was padlocked and the bartender did not have a key. The officer looked for food in other places on the premises but did not find it (N.T. 8).
7. The officer was also not able to locate any serving items or utensils (N.T. 8-9).

8. The officer familiarized herself with the licensed areas of the premises before going there. She inspected the entire licensed area but could find no food, utensils or records of the operation of the premises (N.T. 9).

9. Officer Kohler completed the routine inspection report. It was signed by the bartender. The officer explained to the bartender that food should be available on the premises (N.T. 9-11 and Exhibit B-3).

10. Beverly Jones described herself as a cook and indicated that she was employed at the licensed premises and that she takes care of Mr. Chisolm's wife (N.T. 14-15).

11. Ms. Jones indicated that she has been employed off and on at the licensed premises for almost thirty years, but her most recent hire was in 2004. She also indicated that she helps with the inventory (N.T. 15).

12. She indicated that in December of 2006, she was responsible for cooking finger foods such as chicken wings, hamburgers, hot dogs and hot sausages on the licensed premises. There was a menu, which Ms. Jones claimed to have been using for approximately two years (N.T. 16).

13. Ms. Jones indicated that she keeps her refrigerator padlocked and that there were chicken wings in the freezer, and that there were utensils, which were locked away (N.T. 17-18).

14. Ms. Jones stated that the kitchen is open Thursdays, Fridays and Saturdays and that she takes care of the Licensee's wife on Mondays and Tuesdays (N.T. 18).

15. Deborah Harris is the manager/employee for Jake's Lounge. The records were not available at the time of the inspection. They do maintain beer and liquor invoices in the office of the premises which is downstairs and was locked at the time of the inspection (N.T. 19).

CONCLUSIONS OF LAW:

Count No. 1 - On December 8, 2006, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items, eating utensils and dishes, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

Count No. 2 - On December 8, 2006, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

PRIOR RECORD:

Licensee has been licensed since July 30, 1975, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has no record of prior violations.

DISCUSSION:

The premises is not a bona fide restaurant in that at the time of the inspection, there were no food items available or eating utensils and dishes which would indicate that there was food service on the premises. Although an employee testified that she does serve food, it appears that the food service is sporadic and certainly was not available at the time of the inspection.

In addition, Licensee failed to keep records on the licensed premises, however, counsel for the Licensee does claim that these records did exist but were simply not available at the time and location as they should have been.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$250.00.
Count No. 2 - \$150.00.

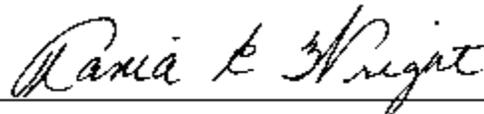
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Jake's Lounge, Inc., License Number R-AP-SS-OPS-1225, pay a fine of Four Hundred Dollars (\$400.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 13th day of November, 2008.



Tania E. Wright, J.

Jake's Lounge, Inc.
Citation No. 06-3048

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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Detach Here and Return Stub with Payment

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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Jake's Lounge, Inc.