

Mailing Date: DEC 29 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1649
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-351940
	:	
FINACARO-MAGLIO INC.	:	
T/A NOAH'S ARK	:	LID - 16212
1548-50 MCKEAN STREET	:	
PHILADELPHIA PA 19145	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-13575	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 7, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Finacaro-Maglio, Inc., t/a Noah's Ark, License Number R-AP-SS-13575 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, February 13, 2008, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation contains two counts.

The first count charges Licensee with violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437 and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41, in that on May 31 and June 15, 2007, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2007.

The second count charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on June 15, 2007, 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.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises on April 9, 2007 and completed that investigation on June 18, 2007. A notice of violation letter was sent to the licensed premises on June 27, 2007. That mailing was returned unclaimed. A citation was issued to the licensed premises on August 7, 2007. That notice was sent by certified mail, return receipt requested to the licensed premises. That citation was signed as received. A hearing notice was sent to the licensed premises on January 25, 2008 by certified mail, return receipt requested. The mailing was returned unclaimed (Exhibits B-1 and B-2).

2. Based upon a complaint and information received, the Bureau opened an investigation of the licensed premises. On Friday, April 20, 2007, Officer J. Clarke from the Bureau conducted a visit to the premises at approximately 6:55 p.m. He was accompanied by Officer Suppin, also from the Bureau. He observed no violations on that date. His second visit to the premises was Saturday, May 12, 2007 at 10:30 p.m. He observed numerous patrons entering and exiting the bar. Officer Suppin made a third visit to the premises on behalf of Officer Clarke. That visit was on May 31, 2007. Officer Suppin noted that the premises did not have a health license (N.T. 25-26).

3. On June 15, 2007, Officer Clarke made a visit to the premises for the purpose of conducting a routine inspection. He arrived at the premises at approximately 6:50 p.m. While there, he noted that the premises was open and operating. There were seven patrons on the premises and one bartender. Officer Clarke identified himself and Officer Suppin and informed them that he was conducting a routine inspection. At that time, he noted that there was no health license posted. There was also no food available and no serving utensils (N.T. 26-27).

4. The officer observed that there were various weapons behind the bar, thirty-eight caliber bullets, a machete and a baseball bat (N.T. 27).

5. On that occasion, the officer spoke to a Mr. Ferguson. He asked Mr. Ferguson if there was any food available. Mr. Ferguson pointed to a vending machine located in the bar which contained bags of chips. He also had ice and soda and food that was microwaveable. He further stated that they haven't served food on the premises in five years. Mr. Ferguson also told him there was no kitchen facility (N.T. 27-28).

6. Mr. Ferguson contacted Mr. Maglio, the owner of the premises. The officer spoke to him on the phone. Mr. Maglio claimed that there was a kitchen on the premises and that it was in the rear and locked up (N.T. 28).

7. The officers identified a door which had a STOP sign in front of it. Mr. Ferguson did not have a key and was unable to open the door. Mr. Maglio arrived on the premises in approximately a half an hour, opened the door and the officers did see that there was a kitchen behind the locked door (N.T. 28-30).

8. There were other things in the kitchen including a toy train set. There were some food items, which included chicken wings in the freezer. They did not have sufficient plates or serving utensils. There were red plastic baskets which one can use as a serving item by placing wax paper in the bottom and the food in the basket. There were approximately ten of these baskets. There was a microwave oven in the kitchen (N.T. 30-31).

9. Mr. Maglio produced an expired Food Preparing License (N.T. 31).

10. The officer contacted the Philadelphia Department of Licenses and Inspections on June 18, 2007. It was confirmed that the license had expired on April 30, 2007 and that the premises did not have a current and valid health license. Verification from the city of Philadelphia indicates that the license had in fact expired (N.T. 32 and Exhibit B-3).

11. The renewal bill was paid on June 19, 2007 and they had a valid license as of that date (N.T. 34 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On May 31 and June 15, 2007, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2007, in violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437 and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41.

Finacaro-Maglio, Inc.
t/a Noah's Ark
Citation No. 07-1649

Count No. 2 - On June 15, 2007, 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.

PRIOR RECORD:

Licensee has been licensed since November 20, 1975, and has a record of prior violations as follows:

Citation No. 04-0848. \$500.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
April 7, 2004.
2. Operated the licensed establishment without a valid health permit or license.
February 25, March 20 and April 7, 2004.

Citation No. 05-2135. \$900.00 fine.

1. Sold liquor for consumption off premises.
July 8 and August 13, 2005.
2. Used loudspeakers or devices whereby music could be heard outside.
July 8 and August 5, 2005.
3. Not a bona fide restaurant in that food items were insufficient.
August 24, 2005.

Citation No. 06-0345. \$300.00 fine.

1. Aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises.
October 8 and December 12, 2005.
2. Sold liquor for consumption off premises.
October 8, 2005.

DISCUSSION:

The Licensee operated the establishment without a valid health permit on May 31, 2007 and June 15, 2007. The license expired on April 30, 2007. In addition, the premises was not a bona fide restaurant in that the employees maintained insufficient food items, eating utensils and dishes. Even the microwaveable foods in the vending machine could not be utilized in that the kitchen was locked up and the microwave oven, therefore, inaccessible.

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Licensee will be required to submit a Verification and a menu indicating that the premises is now a bona fide restaurant. The Licensee will also be required, in addition to payment of the fine, submit proof that they have a current and valid health permit in that the health permit in their possession at that time would have expired April 30, 2008.

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 - \$400.00.
Count No. 2 - \$400.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Finacaro-Maglio, Inc., t/a Noah's Ark, License Number R-AP-SS-13575, pay a fine of Eight Hundred Dollars (\$800.00) 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.

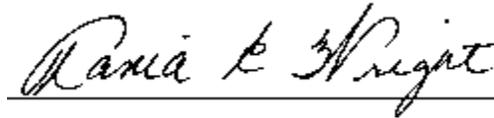
IT IS FURTHER ORDERED that Licensee, Finacaro-Maglio, Inc., t/a Noah's Ark, License Number R-AP-SS-13575, submit a copy of a current and valid health permit within twenty (20) days from the mailing date of this Order. If said documentation is not submitted within twenty (20) days from the mailing date of this Order, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

IT IS ALSO ORDERED that Licensee, Finacaro-Maglio, Inc., t/a Noah's Ark, License Number R-AP-SS-13575, submit a Verification indicating that the premises is a bona fide restaurant, in that they now maintain sufficient food items, eating utensils and dishes. Said documentation must be submitted within twenty days from the mailing date of this Order.

Finacaro-Maglio, Inc.
t/a Noah's Ark
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In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 17TH day of DECEMBER, 2008.



Tania E. Wright, J.

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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VERIFICATION

I/We, Finacaro-Maglio, Inc., t/a Noah's Ark, License No. R-AP-SS-13575, do hereby affirm that the licensed premises contains sufficient seating accommodations for at least thirty (30) persons at tables. Finacaro-Maglio, Inc. has _____ (number) chairs at tables.

I/We, Finacaro-Maglio, Inc., also affirm that there are _____ (number) tables, and the dimensions of the tables are as follows: _____

I/We, Finacaro-Maglio, Inc., further affirm that food is served on the premises (attach menu or list of items offered for sale) as of _____ (date).

I/We, Finacaro-Maglio, acknowledge that thirty (30) seats at tables are to be maintained at all times pursuant to this license.

Subject to the penalties contained in 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities, the undersigned officer(s) verifies that I/We are signing and executing this document as the authorized act and deed of the licensee. I/We hereby certify that the foregoing is true and correct.

Corporate Officer's Signature

Corporate Officer's Signature

Date

Date

NOTE: Mail Verification and accompanying documents to:

PLCB – OFFICE OF ADMINISTRATIVE LAW JUDGE
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661