

Mailing Date: DEC 22 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2124
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-359261
	:	
SEBASTIANO INC.	:	
248-50 MARKET ST.	:	LID - 41086
PHILADELPHIA PA 19106-2817	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-8473	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 17, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Sebastiano, Inc., License Number R-AP-SS-8473 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, March 12, 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 467 of the Liquor Code, 47 P.S. Section 4-467, in that on August 8, 2007, Licensee, by its servants, agents or employees, failed to constantly and conspicuously expose Restaurant Liquor License under a transparent substance on the licensed premises.

The second 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 August 8, 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.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on August 8, 2007 and was completed on August 13, 2007. A notice of violation letter was sent to the licensed premises on August 21, 2007. The notice was signed as received on August 22, 2007. A citation was issued to the premises dated September 17, 2007. It was signed as received at the licensed premises. A citation hearing notice was sent to the licensed premises on January 25, 2008 by the Office of Administrative Law Judge. That mailing was sent by certified mail, return receipt requested and by first class mail. The mailing was signed as received by Greg Dillon (N.T. 8-9 and Exhibits B-1 and B-2).

2. Officer McGrath from the Bureau of Enforcement visited the licensed premises on August 8, 2007. He was accompanied by Officer Gall, also from the Bureau of Enforcement. The officers arrived at approximately 6:45 p.m. in order to conduct a routine inspection of the licensed premises. They identified themselves upon entering the licensed premises to a waiter who introduced himself as John Miller. The premises was open and operating and Mr. Miller was rendering service to patrons (N.T. 4-6).

3. The officers conducted a routine inspection of the premises and found that the liquor license was not posted. Mr. Miller came out of the basement, introduced himself and brought with him the liquor license. There was no health permit posted. Officer Gall had warned the Licensee about posting the liquor license during a previous visit to the premises (N.T. 6-7).

4. According to the records of the city of Philadelphia Department of Licenses and Inspections, the license expired on April 30, 2006 and as of the date of certification, no license had been issued (N.T. 8-11 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On August 8, 2007, Licensee, by its servants, agents or employes, failed to constantly and conspicuously expose Restaurant Liquor License under a transparent substance on the licensed premises, in violation of Section 467 of the Liquor Code, 47 P.S. Section 4-467.

Count No. 2 - On August 8, 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, 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.

PRIOR RECORD:

Licensee has been licensed since October 22, 1997, and has no record of prior violations.

DISCUSSION:

Licensee failed to display a liquor license under a transparent substance on the licensed premises. The Licensee had earlier been warned that the license needed to be displayed but apparently forgot to post it. With regard to the health permit, it had expired and Licensee will be required to submit a current and valid health permit.

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 - \$150.00.

Count No. 2 - \$350.00.

Accordingly, we issue the following

ORDER:

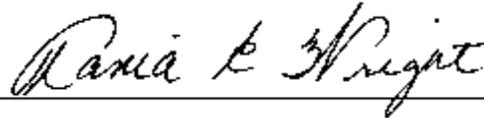
THEREFORE, it is hereby Ordered that Licensee, Sebastiano, Inc., License Number R-AP-SS-8473, pay a fine of Five Hundred Dollars (\$500.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Sebastiano, Inc.  
Citation No. 07-2124

IT IS FURTHER ORDERED that Licensee, Sebastiano, Inc., License Number R-AP-SS-8473, 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.

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

Dated this 16TH 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

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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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Sebastiano, Inc.