

Mailing Date: JAN 8 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2125
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-359128
	:	
196 NEDRO INC.	:	
196-198 W. NEDRO ST.	:	LID - 48951
PHILADELPHIA PA 19120-2450	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-OPS-3500	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**LORI HAHN MASLIN, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 1, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 196 Nedro, Inc., License Number R-OPS-3500 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, July 17, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on August 9, 2007, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient seating.

FINDINGS OF FACT:

1. Enforcement Officer C. McGrath conducted an investigation of the licensed premises on August 9, 2007. He arrived at the premises at approximately 3:30 p.m. The officer was instructed to conduct a routine inspection as the result of a complaint (N.T. 5-7).
2. When the officer entered the premises, he walked in through the front door. He observed three tables with just a bench connected to it on each side. He estimated that three people could sit on each bench with a maximum of approximately six people at each table. In that there were three tables with benches, a total of eighteen people could be seated (N.T. 7-8).
3. The officer also observed an additional fourteen fold up chairs that were behind the benches (N.T. 8).
4. The officer spoke to an employee, Lynn Foy, who was located at the counter, behind a glass enclosure (N.T. 9).
5. The glass enclosure had a small opening that you could speak through and that items could be handed through (N.T. 9).
6. The officers found no patrons on the premises at the time of his visit (N.T. 10).
7. The officer conducted a routine inspection and determined that there was inadequate seating in that there were not sufficient tables and chairs to seat thirty people (N.T. 10).
8. The officer informed Ms. Foy that the seating was inadequate (N.T. 10-11).
9. The officer inspected the entire licensed area which consisted of the upstairs, the main serving area and the food preparation area behind the glass. There was an office downstairs in the basement. The officer determined the serving and storage areas based upon records from the Pennsylvania Liquor Control Board (N.T. 12-15 and Exhibit B-3).
10. Chhai Sim, the owner of the licensed premises, identified a set of photos, which he had taken in preparation for hearings for the Malt and Brewed Beverage Board, sometime prior to September 10, 2007. Mr. Sim indicated that the chairs were folded for cleaning purposes. The pictures indicated what now appears to be adequate seating (N.T. 23-29 and Exhibit L-1).

CONCLUSIONS OF LAW:

On August 9, 2007, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient seating, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

PRIOR RECORD:

Licensee has been licensed since February 26, 2002, and has a record of prior violations as follows:

Citation No. 04-0208. \$200.00 fine.

1. Sold, furnished or gave liquor for consumption off premises.  
January 26, 2004.

DISCUSSION:

The Court found the officer's testimony credible and found that even if there were enough chairs at the premises, there were insufficient tables or other surfaces for dining. In that the Licensee took these photographs of the premises in preparation for September 10, 2007 hearing, the Court will accept the photos as adequate assurance that this situation was remedied shortly after the officer's visit to the premises.

Under the circumstances, a monetary penalty shall be imposed. While there is no need for further verification, the Licensee is warned that it must maintain the seating and that the premises is subject to inspection at any time they are doing business. Therefore, the \$350.00 monetary penalty shall be imposed.

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.

Accordingly, we issue the following

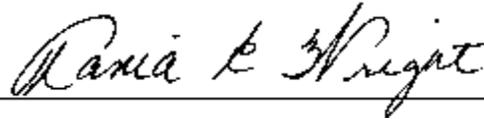
ORDER:

THEREFORE, it is hereby Ordered that Licensee, 196 Nedro, Inc., License Number R-OPS-3500, pay a fine of Three Hundred Fifty Dollars (\$350.00) 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.

196 Nedro, Inc.  
Citation No. 07-2125

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

Dated this 31st 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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196 Nedro, Inc.