

Mailing Date: DEC 9 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1238
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-366602
	:	
SOLO NIGHTCLUB LLC	:	
520 N. CHRISTOPHER	:	LID - 57893
COLUMBUS BLVD.	:	
PHILADELPHIA PA 19123	:	
	:	
	:	
PHILADLEPHIA COUNTY	:	
LICENSE NO. R-AP-SS-8363	:	

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 December 16, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Solo Nightclub, LLC, License Number R-AP-SS-8363 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 7, 2009, 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 404 of the Liquor Code, 47 P.S. Section 4-404, in that from October 10, 2007 through May 20, 2008, Licensee, by its servants, agents or employees, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement was assigned to investigate the Licensee to determine if Licensee was R.A.M.P. compliant relevant to the Conditional Licensing Agreement. She obtained a certified copy of the agreement from the records of the Pennsylvania Liquor Control Board (N.T. 6-8 and Exhibit B-3).

2. A conditional licensing agreement (CLA) was signed between the Chief Counsel of the Pennsylvania Liquor Control Board and Johnny Nguuyen of JP Entertainment Liquor, L.L.C. on October 26, 2006. A Certificate of Approval & Letter of Authority dated July 11, 2007 was sent to Solo Nightclub, L.L.C. The letter granted conditional approval for the license application for transfer from JP Entertainment, L.L.C. The letter indicates that:

It is understood that the terms of the Conditional Licensing Agreement approved by the Board on November 1, 2006 (dated October 26, 2006) will remain in effect on the license and location.

3. Along with the copy of the attached Certification of Completion, the letter of July 11, 2007 was to constitute a temporary authority to sell liquor and malt beverages, purchased at a discount at Wine & Spirit Stores. It also granted Licensee an Amusement Sunday Sales Permit effective for thirty days from the date of the Certificate of Completion. The Bureau did not obtain a Certificate of Completion and therefore it was not available for the Court to review. On August 16, 2007 the Pennsylvania Liquor Control Board sent a letter to Licensee indicating that the CLA was originally approved under LID 56659 and that the conditions followed the license and premises. The conditions are reiterated in the letter of August 16, 2007. Notwithstanding that the letter authorizing transfer of the license indicates that the license expires on October 31, 2007, in Philadelphia that license would have had to be validated (not renewed) on or before November 1, 2007 and renewed November 1, 2008 (Exhibits B-3 and B-4).

4. The Conditional Licensing Agreement (CLA) states in pertinent part:

7e. JP Entertainment will not use, hire or employ the services of any promoter or the services provided by a promoter to operate or conduct business or events at the premises;

- 7g. Licensee shall, within ninety (90) days of the renewal of the underlying application become compliant with and remain compliant with the Responsible Alcohol Management provision of the Liquor Code including, but not limited to:
1. New employee orientation;
  2. Training for alcohol service personnel;
  3. Manager/owner training; and
  4. Displaying of responsible alcohol service signage.

5. The officer first visited the premises on January 4, 2008 and found that the establishment was not open or in operation. The officer returned to the premises on March 14, 2008 and spoke with the owner and Board approved manager of the licensed premise, Tam Tran (N. T. 26 and 57-58).

6. On March 19, 2008, Mr. Tran supplied liquor and beer invoices to the Bureau (N.T. 27).

7. On March 28, 2008, the officer saw a website, which purported to be that of the Licensee. The site advertised a rap artist performance on that evening at the licensed premises. The officer went to see Mr. Tran to be certain that the concert did not have an *outside* promoter in violation of the CLA at Section 7e (N. T. 27-28 and Exhibit B-3).

8. Mr. Tran told the officer that he really did not understand the CLA and he was advised by the officer to speak with his attorney (N.T. 28-29).

9. The officer then questioned Mr. Tran regarding an upcoming promotion on April 4, 2009, featuring *Lil Kim* – a female rap artist. Mr. Tran was told that he could not use an outside promoter. On April 17, 2008, the officer reviewed a printout of events held at the premises. Based upon her conversation with Mr. Tran and information gathered from the computer printout, the officer concluded that Licensee used an *outside promoter*, Diamond, i.e., Diamond World Entertainment, for the event of April 4, 2008. Other events on the printout either did not take place or were promoted by Licensee (N.T. 30 -36, 51 and Exhibit B-5).

#### CONCLUSIONS OF LAW:

From on or about January 31, 2008 through June 17, 2008, Licensee, by its servants, agents or employes, *did not* fail to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license, in violation of Section 404 of the Liquor Code, 47 P.S. Section 4-404 in that the terms of the Conditional Licensing Agreement call for Licensee to become RAMP Certified *ninety (90) days from the **renewal** of the underlying application, and not from the approval of the license.*

On or about April 4, 2008, Licensee, by its servants, agents or employes, *failed* to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license, in violation of Section 404 of the Liquor Code, 47 P.S. Section 4-404 in that the terms of the Conditional Licensing Agreement *prohibit the hiring, employing or use* of a promoter to operate or conduct business or events at the premises.

PRIOR RECORD:

Licensee has been licensed since July 11, 2007, and has no record of prior violations.

DISCUSSION:

***Requirement for Responsible Alcohol Management Program (RAMP) Certification***

Overall, it is disconcerting that the Conditional Licensing Agreement (CLA) was not tailored to specifically address the current Licensee and that no CLA was ever signed by Mr. Tran. Specifically, it is difficult for the Court to interpret the language of the document, in that certain terms of art are undefined. In the licensing arena, licenses are renewed every other year and validated in between those years. In the marketing arena, promoting and advertising are not the same, but do have commonality. Even so, whether or not the Licensee completely understood all of the terms of the CLA, there is little doubt that Licensee was aware that the CLA was made applicable to them and that Licensee was responsible for complying with its terms.

The officer explained repeatedly to Mr. Tran that by the Bureau's interpretation, Licensee was to be R.A.M.P. certified ninety (90) days from the date of approval of the application (July 11, 2007). Mr. Tran indicated that he started R.A.M.P. training during the time of the officer's investigation. The officer closed her investigation on May 20, 2008. At that time, Licensee was still not R.A.M.P. certified and was therefore cited for noncompliance. However, with regard to R.A.M.P. certification, **by the language of the CLA**, the relevant date for compliance is the renewal date and not the date that the Licensee was given authority to operate or the date that the transfer was approved. Here, the license was said to expire on October 31, 2007, but according to the procedure in Philadelphia the license was to be validated by November 1, 2008 and *renewed* by November 1, 2008. Ninety days from the renewal date would have required that the Licensee be R.A.M.P. compliant on or near January 30, 2009. The CLA was written with the prior Licensee in mind, but no changes were made to the CLA to tailor fit the transferee. Licensee was timely R.A.M.P. certified on **June 18, 2008**.

***Prohibition against Promoters Operating or Conducting Business or Events at the Premises***

Mr. Tran, the owner, admitted that he used an outside promoter for a Lil' Kim concert event on April 4, 2008. He stated that he no longer uses outside promoters. He uses radio stations to advertise events, but denies that they are used or hired as promoters to operate or conduct business or events at the premises. The Bureau limited its investigation and charges to use of *outside* promoters. Clearly, there is still an issue as to what in fact *is* authorized by the CLA relative to promotion of events on the premises. Mr. Tran is not charged here with using promoters on any date other than April 4, 2008; therefore, no further discussion of the issue is necessary to decide the instant matter.

**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.

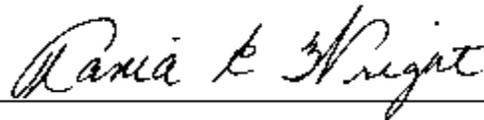
Accordingly, we issue the following

**ORDER:**

THEREFORE, it is hereby Ordered that Licensee, Solo Nightclub, LLC, License Number R-AP-SS-8363, pay a fine of Two Hundred Fifty Dollars (\$250.00) 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 2<sup>ND</sup> day of DECEMBER, 2009.



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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Solo Nightclub, LLC  
Citation No. 08-1238

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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