

Mailing Date: JAN 9 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1324
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-374015
v.	:	
	:	LID - 13535
TONY'S BAR INC	:	
144 W CUMBERLAND ST	:	
PHILADELPHIA PA 19133-4021	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-OPS-8996	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.

For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 4, 2008. The citation alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on May 12, 2008, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2004.

At the hearing scheduled for November 13, 2008, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period May 6 through May 15, 2008, and sent written notice of the results of its investigation to the licensed premises by certified mail on May 20, 2008 (N.T. 8, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on June 4, 2008 (N.T. 8-9, Exhibit B-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on September 25, 2008.

4. Liquor Enforcement Officer Justin Clarke inspected the licensed premises on May 12, 2008, and found that the health permit on display had expired on April 30, 2004. A renewal bill for this license was paid on May 19, 2008 (N.T. 4-6, Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 19, 1986, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 89-1438. 1 day suspension with thereafter conditions.

1. Not a *bona fide* restaurant (insufficient chairs at tables).

Citation No. 95-2580. \$250.00 fine.

2. Failed to display sanitary permit for a public eating place.
3. Not a *bona fide* restaurant (insufficient chairs at tables).

Citation No. 96-1768. 2 days suspension.

1. Not a *bona fide* restaurant (food, eating utensils and dishes).

Citation No. 99-1211. 2 days suspension with conditions thereafter.

1. Operated without a valid health permit or license. June 10, 12 and 22, 1999.
2. Failed to maintain business records, 2 years immediately preceding June 22, 1999.

Citation No. 03-0771. \$300.00 fine.

1. Gambling (machines). December 16 and 17, 2002.

Citation No. 05-1362. \$300.00 fine.

1. Failed to keep records on the licensed premises. May 25 and June 3, 2005.

Citation No. 06-2581. 1 day suspension.

1. Loudspeakers could be heard outside. August 27 and September 16, 2006.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Tony's Bar, Inc., License No. R-SS-OPS-8996, shall pay a fine of four hundred dollars (\$400.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 2nd day of January, 2009.



David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

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 to:

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

Citation No. 08-1324
Tony's Bar, Inc.