

Mailing Date: FEB 23 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1544
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-370550
	:	
H GARDEN INC.	:	
6775 N. 5 TH ST.	:	LID - 59093
PHILADELPHIA PA 19126-3027	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-4718	:	

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 July 1, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against H Garden, Inc., License Number R-AP-SS-4718 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, December 9, 2008, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, no one appeared. Therefore, the hearing proceeded *ex parte*.

The citation contains two counts.

The first count charges Licensee with violation of Sections 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-406(a)(1), in that on February 28, 2008, Licensee, by its servants, agents or employees, sold, furnished or gave liquor for consumption off 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 May 5, 2008, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on February 20, 2008 and ended May 20, 2008. A notice of violation letter was sent to the licensed premises on June 18, 2008 by certified mail, return receipt requested. The mailing was signed as received on June 19, 2008. A citation was issued to the licensed premises on July 1, 2008. A copy of that citation was sent by certified mail to the licensed premises. It was signed as received on July 3, 2008. A citation hearing notice was sent to the licensed premises on October 22, 2008 notifying Licensee of the December 9, 2008 hearing. The notice was sent by certified mail, return receipt requested. That mailing was signed as received on October 24, 2008 (Exhibits B-1 and B-2).

2. In February of 2008, Officer J. Kohler conducted an inspection of the licensed premises based upon a complaint alleging illegal importation and sales of Korean liquor known as *Soju*. Based upon that complaint, the officer arrived at the premises on February 28, 2008 accompanied by Corporal Goodling of the State Police, Officer Gall and Officer Clark of the Bureau of Enforcement. There was also a confidential informant (N.T. 6).

3. The confidential informant was Korean and acted under the direction of the Pennsylvania State Police, making purchases of *Soju* from various establishments (N.T. 5-6).

4. The officers arrived at the premises at 6:40 p.m. They supplied the confidential informant with thirty dollars and asked him to purchase a bottle of *Soju*. Prior to going to the premises, they verified the location and the layout of the premises. The officer had been inside the premises on an earlier occasion (N.T. 7).

5. Prior to going inside the premises, the officers made sure that the confidential informant had no other product on his person. He was supplied with a wallet for his identification and money to make a purchase (N.T. 8).

6. From the exterior of the premises, Officer Kohler could see the interior of the premises. The confidential informant went straight up to the counter and approached an Asian female clerk. They had a conversation. The confidential informant then pulled out his wallet. Approximately three minutes later, the confidential informant emerged from the licensed premises with two bottles of Soju (N.T. 9-10).

7. The confidential informant was informed, by the clerk, that he could not buy one bottle of Soju, and that there was a two bottle minimum. The clerk charged him twelve dollars for each bottle. He gave her twenty-four dollars and returned with six dollars in change (N.T. 10 and Exhibits B-4 and B-5).

8. Officer Kohler went back to the licensed premises on May 5, 2008 at 11:10 a.m. and conducted a routine inspection of the premises in order to examine the records and determine if the Licensee was purchasing the Soju from the state store. Officer Kohler was referred to the manager, Mr. Park (N.T. 13-14).

9. Officer Kohler conducted a routine inspection of the premises and was unable to find a health permit, that is to say a Food Preparing License from the Philadelphia Department of Licenses and Inspections (N.T. 15).

10. The certified records from the Department of Licenses and Inspections dated June 4, 2008 indicate that the Licensee did not have and had not applied for a Food Preparing and Serving License, i.e. a health permit (N.T. 15-16 and Exhibit B-3).

11. Officer Kohler has been involved with approximately twenty investigations involving Soju. She worked for the Alcohol Tobacco and Trade Bureau as well as the Pennsylvania Liquor Control Board Auditor's Division. The products that were confiscated can be purchased through the Pennsylvania Liquor Control Board State Store as special liquor orders. However, some of the Soju products that are on the street are extremely high in alcohol content and are illegal (N.T. 12).

12. Based upon these findings, the Licensee was charged with selling and furnishing liquor for consumption off the premises (N.T. 13).

13. The Licensee had records indicating that he had made the purchase of Ginro Soju through the Pennsylvania Liquor Control Board state store system (N.T. 15).

14. Officer Kohler indicated that Soju is distilled liquor which is green based and very high in alcohol content. While it is packaged like a beer or malt liquor, the alcohol content is over twenty percent (N.T. 18 and Exhibits B-4 and B-5).

15. The Soju was confiscated and placed on Property Receipt #WI-3524 as evidence (Exhibit B-6).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On February 28, 2008, Licensee, by its servants, agents or employees, sold, furnished or gave liquor for consumption off premises, in violation of Sections 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-406(a)(1).

Count No. 2 - On May 5, 2008, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, 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 December 7, 2007, and has no record of prior violations.

DISCUSSION:

In that the Licensee purchased Soju from the State Store, it is not unlawful for the Soju to be on the premises or consumed on the premises. However, in that it is liquor and not beer or a malt liquor, it was illegal for it to be sold for consumption off premises. The officer stated that the alcohol content of Soju is every high. In addition, there are brands of Soju, which are sold on other markets that have an even higher alcohol content. Those products may not be sold for consumption on or off a licensed establishment.

In addition to the sales of Soju for off premises consumption, the Licensee is charged with operating the establishment without a valid health permit or license on May 5, 2008. The Licensee will be required to produce a valid health permit in addition to paying a monetary fine.

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 - \$450.00.
Count No. 2 - \$250.00.

Accordingly, we issue the following

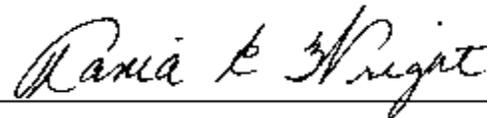
ORDER:

THEREFORE, it is hereby Ordered that Licensee, H Garden, Inc., License Number R-AP-SS-4718, pay a fine of Seven Hundred Dollars (\$700.00) 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, H Garden, Inc., License Number R-AP-SS-4718, submit a copy of a current and valid health permit within twenty (20) days from the mailing date of this Adjudication. If said documentation is not submitted within twenty (20) days from the mailing date of this Adjudication, 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 20th day of February, 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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H Garden, Inc.
Citation No. 08-1544

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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H Garden, Inc.