

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. 08-1585
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-375800
	:	
4055 CRESSON INC.	:	
4055 CRESSON ST.	:	LID - 59147
PHILADELPHIA PA 19127-1720	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-11164	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 9, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 4055 Cresson, Inc., License Number R-AP-SS-11164 (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 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 June 6, 2008, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2008.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on June 6, 2008 and ended June 20, 2008. A notice of violation letter was sent to the licensed premises on June 20, 2008 by certified mail, return receipt requested. The certified mailing was returned on July 12, 2008 as “not deliverable as addressed” and that it was able to be forwarded. The address appears as 4055 Cresson, Inc., Philadelphia, PA 19127. A citation was issued to the licensed premises on July 9, 2008 and was sent by certified mail, return receipt requested. It was returned to the sender as “unclaimed” and “not able to be forwarded.” The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises by certified mail, return receipt requested. The mailing was returned unclaimed (N.T. 8-10 and Exhibits B-1 and B-2).

2. Officer Frank Spera, a squad supervisor from the Bureau of Enforcement, has been employed by the Bureau for approximately ten years. He has been a squad supervisor for approximately six years. On June 6, 2008, he had occasion to visit the licensed premises at approximately 8:25 p.m. The premises was open for business. There were approximately five patrons and a male and female bartender providing service of alcoholic beverages (N.T. 5-6).

3. Officer Spera entered the premises and spoke to the employee in charge, Rich Werntz, and informed him that a routine inspection would be conducted of the licensed premises (N.T. 6-7).

4. Mr. Werntz was unable to provide a valid health permit. Certified records of the city of Philadelphia Department of Licenses and Inspections indicate that the licensed establishment never applied for a Preparing and Serving Food License and, at any rate, had no valid license on June 6, 2008 (N.T. 7-8, 10-11 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On June 6, 2008, Licensee, by its servants, agents or employes, 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.

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PRIOR RECORD:

Licensee has been licensed since January 17, 2008, and has no record of prior violations.

DISCUSSION:

Licensee operated the licensed establishment without a valid health permit on June 6, 2008. In addition to the monetary penalty, 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.

Accordingly, we issue the following

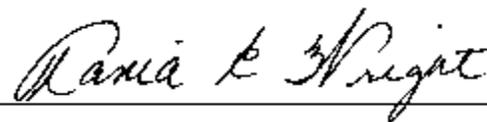
ORDER:

THEREFORE, it is hereby Ordered that Licensee, 4055 Cresson, Inc., License Number R-AP-SS-11164, 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.

IT IS FURTHER ORDERED that Licensee, 4055 Cresson, Inc., License Number R-AP-SS-11164, 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.

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**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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