

Mailing Date: JUL 06 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1760
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-372533
	:	
BILLY JEANS BOYS LLC	:	
T/A POGEY'S RESTAURANT &	:	LID - 51625
TAVERN	:	
1021 MOREHALL ROAD	:	
CHARLESTOWN TWP.	:	
DEVAULT PA 19432	:	
CHESTER COUNTY	:	
LICENSE NO. R-AP-SS-17355	:	

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 August 5, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Billy Jeans Boys, LLC, t/a Pogeys's Restaurant & Tavern, License Number R-AP-SS-17355 (hereinafter "Licensee").

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t/a Pogeys Restaurant & Tavern  
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Licensee of record received notice of the hearing but failed to appear. Francis X. O'Brien attempted to enter his appearance on behalf of the Licensee. However, it was determined that Attorney O'Brien represented Malvern Federal Savings Bank, who had a security interest in the license. However, according to the records of the Pennsylvania Liquor Control Board, Malvern Bank had not perfected their interest and were not the Licensees of record. Therefore, Malvern Bank did not have standing to represent the Licensee.

An Administrative hearing was held on Tuesday, September 29, 2009, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), in that on May 16, 2008, Licensee, by its servants, agents or employees, sold alcoholic beverages after the Restaurant Liquor License expired on March 31, 2008, and had not been renewed and/or validated.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises. The officer arrived at 7:00 p.m. on May 16, 2008. When the officer arrived, he was accompanied by a second officer. The two officers found the premises open and operating (N.T. 30-31).
2. The officer noted that there were approximately thirty patrons on the premises and one bartender. The officer noted numerous sales of alcoholic beverages. The officer purchased a Coors Lite bottle of beer for \$3.00 from the bartender (N.T. 31-32).
3. Following the purchase of the alcoholic beverage, the officers identified themselves to the bartender. He contacted the vice president, Ken Long. He spoke to Mr. Long by telephone. The officer was not able to obtain any type of authorization for the Licensee to sell alcoholic beverages on May 16, 2008. Therefore, he told the vice president by phone that he must cease all sales of alcohol, but could stay open to sell food (N.T. 32-33).
4. Certified records from the Pennsylvania Liquor Control Board dated September 22, 2009 indicate that the corporate setup for the licensed premises was Kenneth T. Long as a managing member with fifty percent interest, who is the manager of the licensed premises, and a Robert M. Long, who is the other fifty percent shareholder (Exhibit B-5).
5. Certified records from the Pennsylvania Liquor Control Board dated December 11, 2008 indicate that the license expired on March 31, 2008 and that the premises did not possess a valid liquor license or temporary authority to operate on May 16, 2008. Temporary authority was issued on May 19, 2008 (Exhibit B-3).

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CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On May 16, 2008, Licensee, by its servants, agents or employees, sold alcoholic beverages after the Restaurant Liquor License expired on March 31, 2008, and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since February 24, 2004, and has a record of prior violations as follows:

Citation No. 06-2900X. \$100.00 fine.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.  
October 27, 2006.

Citation No. 07-2161X. \$300.00 fine. Fine not paid and license suspended one day and thereafter until fine paid. Fine still not paid, suspension vacated and license revoked. Court overturned revocation.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.  
July 20 and 27, 2007.

DISCUSSION:

Licensee did not have requisite authority to operate the licensed premises on May 16, 2008. The history of this license indicates that Licensee failed to attend a hearing before the Administrative Law Judge on December 10, 2007 under Citation No. 07-2161X. Licensee was issued a fine of Three Hundred Dollars to be paid within twenty days of January 31, 2008. The fine was not paid and after numerous attempts to obtain payment of the fine, the license was revoked effective August 25, 2008. Licensee appealed a Supplemental Order *nunc pro tunc* to the Board, which revoked the license. The *nunc pro tunc* appeal was denied. Licensee then appealed to the Court of Common Pleas of Chester County. On April 8, 2010, Liquor License R-17355 was reinstated and the original fine of Three Hundred Dollars and a one day suspension was to be imposed by the Office of Administrative Law Judge.

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The license was acquired by the Malvern Federal Savings Bank, the secured lender of the Licensee of record. The secured lender purchased the license at a sheriff sale after a foreclosure action. The lender is now working with the Board to renew and/or validate the license. Under the circumstances, a one day suspension shall be imposed, which will be deferred pending renewal of the license.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following

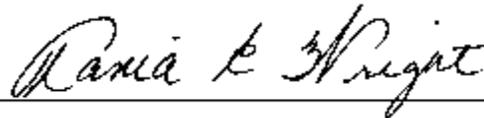
ORDER:

THEREFORE, it is hereby Ordered that the Restaurant Liquor License of Billy Jeans Boys, LLC, t/a Pogey's Restaurant & Tavern, License Number R-AP-SS-17355, be suspended for a period of one (1) day. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

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

Dated this 17<sup>TH</sup> day of JUNE, 2010.



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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