

Mailing Date: MAR 06 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1764
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-376880
	:	
IL SONG YI	:	
KYE YE YI	:	LID - 5322
5238 LANCASTER AVE.	:	
PHILADELPHIA PA 19131-4007	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. E-SS-OPS-181	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**DANIEL KIM  
PRO SE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 29, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Il Song Yi, Kye Ye Yi, License Number E-SS-OPS-181 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, November 25, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation count charges Licensee with violation of Section 493(21) of the Liquor Code, 47 P.S. Section 4-493(21), in that on June 25, 2008, Licensee, by its servants, agents or employes, refused Enforcement Officers the right to inspect completely the entire licensed premises at a time during which the premises were open for the transaction of business or when patrons or guests or members were in that portion of the licensed premises wherein alcoholic beverages are sold.

FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premises, which began on June 25, 2008 and concluded June 25, 2008. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested on July 15, 2008. It was signed as received on July 16, 2008. A citation was issued to the licensed premises dated July 29, 2008. It was sent to the licensed premises by certified mail, return receipt requested. It was signed as received (N.T. 15-20 and Exhibits B-1 and B-2).

2. Officer H. Ringgold is employed by the Bureau of Enforcement and at the time of hearing had been employed for approximately six and a half years. The officer visited the licensed premises on June 25, 2008. The officer arrived at approximately 5:30 p.m. accompanied by Officer Brown, also from the Bureau of Enforcement (N.T. 6-7).

3. When the two officers entered, they observed two Asian males behind a plexiglass partition. There were three or four patrons on the premises who were conversing with the clerk ordering and receiving beer and/or food (N.T. 7).

4. The officers visited the premises on June 25, 2008 to conduct a routine inspection of the premises. At the time of the visit, the premises was open and operating (N.T. 8).

5. The officers identified themselves and presented their state identification and badge. Both officers were wearing street clothes at the time. After identifying themselves, the officers asked to enter the area behind the plexiglass partition (N.T. 8).

6. The employee behind the plexiglass refused to allow the officer to enter this area. The officers again explained who they were and asked if they could get the owner or the manager. They contacted the owner, who spoke with the officer by phone. The officer identified himself and explained why he was there. He informed the owner that it would not take long for them to conduct a routine inspection, and asked if he could inform his employees to enter the area behind the plexiglass (N.T. 9).

7. The employees identified the person on the phone as the owner and manager of the premises (N.T. 10).

8. On the phone, the owner/manager was polite to the officer. The officer was told that it was not a problem. After speaking to the owner/manager, the officer handed the phone back to the employee who spoke to the owner/manager but still denied the officers entry into the plexiglass area (N.T. 10-11).

9. During the length of the officer's visit, patrons were entering the premises and ordering items, and transactions were being completed. The officers remained on the premises from fifteen to thirty minutes (N.T. 11)

10. Both officers presented their state identification cards and gold badges (N.T. 12 and Exhibits B-3 and B-4).

11. The officer indicated that all the doors that would allow them total access to the premises were located behind the plexiglass. There was some seating in the front, everything else was behind the plexiglass (N.T. 21).

12. Andre Brown is employed by the Bureau of Enforcement and at the time of hearing, had been so employed for approximately two and a half years. Officer Brown accompanied Officer Ringgold to the premises on June 26, 2008 arriving at approximately 5:30 p.m. The officer was in plain clothes and was there to conduct an inspection of the premises. He confirmed that the officers presented their identification cards and gold badges to the employees on the premises (N.T. 22-23 and Exhibits B-3 and B-4).

13. At no time were the officers allowed access behind the plexiglass (N.T. 25).

14. Daniel Kim was employed as the manager of the licensed premises one week after this incident. He stated that the two clerks are no longer employed by the licensed establishment (N.T. 28).

#### CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On June 25, 2008, Licensee, by its servants, agents or employes, refused Enforcement Officers the right to inspect completely the entire licensed premises at a time during which the premises were open for the transaction of business or when patrons or guests or members were in that portion of the licensed premises wherein alcoholic beverages are sold, in violation of Section 493(21) of the Liquor Code, 47 P.S. Section 4-493(21).

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PRIOR RECORD:

Licensee has been licensed since July 23, 1986, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 88-2341. \$1,000.00 fine.

1. Minor frequenting.
2. Sales to a minor.

Citation No. 89-1054. \$1,200.00 fine.

1. Sales to a minor.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.

Citation No. 91-1631. \$600.00 fine and seven days suspension.

1. Furnished false information regarding sales of food and beverages when applying for a Sunday Sales Permit.

Citation No. 91-1953. \$150.00 fine.

1. Displayed signs inside the licensed premises, visible from the outside, which advertised, directly or indirectly, the price at which malt or brewed beverages would be sold.

Citation No. 91-2317. \$200.00 fine.

1. Not a bona fide eating place in that chairs at tables were insufficient.

Citation No. 95-1949. \$1,250.00 fine.

1. Sales to a minor.
2. Minor frequenting.

Citation No. 96-1658. \$100.00 fine.

1. Failed to display on the licensed premises documentary evidence that the premises meets all sanitary requirements for a public eating place.

Citation No. 04-1849. \$350.00 fine.

1. Operated the licensed establishment without a valid health permit or license.  
September 23, 2004.

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Citation No. 06-0059. \$1,000.00 fine.

1. Sales after the license expired and had not been renewed and/or validated.  
December 14, 2005.

DISCUSSION:

Mr. Kim indicated he spoke with the employees, however, the employees were not present in Court. According to Mr. Kim, the employees told him that the officers were in plain clothes and that they had never seen officers with tattoos on their arms or wearing baseball caps. Mr. Kim indicated that the area where the premises is located is a high crime area. He stated that the badge looked real, but the identification looked like a check cashing identification to them. They further indicated that because it was after 5:00 p.m. and that most city officials end their job by 5:00 p.m., the clerks were suspicious and, therefore, did not let the officers behind the plexiglass.

The Court admonished the Licensee at the end of the hearing that this was not the Licensee's first encounter with officers from the Bureau. Secondly, if they had any fear or any trepidation or any concern, the appropriate thing to do was to call for a uniformed officer and not simply to deny the Bureau officers entry to the premises. After speaking to the manager/owner on the phone, the officers were sure that they would be allowed to enter the premises, but they were not. They failed to take reasonable steps to verify the identity of the Bureau officer. If the clerks were not satisfied, Licensee could have called the Bureau or local uniformed police officers.

After reviewing the officer's identification cards, it is understandable why Licensee's employees might have questioned the legitimacy of the identification cards. The identification cards are similar in quality and look like check cashing cards. Secondly, the officers were not wearing uniforms.

It is also understandable why Licensee would not have simply wanted unknown persons to go behind the plexiglass, for fear that they might be robbed. However, the liquor industry is highly regulated. The Licensee is aware that Bureau officers may inspect the premises at any time when the premises is open for business. The Licensee chose to set up the premises in such a way that going behind the plexiglass is the only access to the remainder of the premises. The placement of the plexiglass also limits access to seating for patrons which is an inherent problem for a restaurant licensee. The attempted inspection occurred at 5:30 in the evening during the summertime, which necessarily means that it was daylight.

Licensee refused the Enforcement officers the right to inspect the entire premises at the time when the premises was open for the transaction of business and when patrons were present and doing business on the premises. The Licensee was engaged in the sale of malt or brewed beverages. The Licensee had ample opportunity to verify the identity of the officers and to take steps that would have insured their own safety, and permitted them to comply with the law.

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Under the circumstances, a \$1,000.00 penalty shall be imposed.

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.

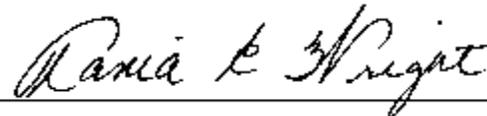
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Il Song Yi, Kye Ye Yi, License Number E-SS-OPS-181, pay a fine of One Thousand Dollars (\$1,000.00) 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 25TH 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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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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