

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. 08-2067
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-379270
	:	
FIFTEENTH AND FAIRMOUNT INC.	:	
1436 FAIRMOUNT AVENUE	:	LID - 10040
PHILADELPHIA PA 19130-2908	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-1540	:	

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 September 9, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Fifteenth and Fairmount, Inc., License Number R-AP-SS-1540 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, January 7, 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 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 August 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 August 6, 2008 and ended August 7, 2008. A notice of violation letter was sent to the licensed premises on August 15, 2008, 2008 by certified mail, return receipt requested. The certified mailing was signed as received at the licensed premises. A citation was issued September 9, 2008 and sent to the licensed premises by certified mail, return receipt requested. It was signed as received on September 13, 2008 at the licensed premises. On November 20, 2008, the Office of Administrative Law Judge sent a citation hearing notice to the licensed premises by certified mail, return receipt requested. The mailing was signed as received (N.T. 8-10 and Exhibits B-1 and B-2).

2. Officer T. Amato is employed by the Bureau and has been so employed for approximately eleven years. She visited the licensed premises on Wednesday, August 6, 2008 to conduct an inspection of the premises. She arrived at 2:10 p.m. The premises was open and operating and three patrons were seated inside (N.T. 5-6).

3. As a result of the inspection, she determined that the premises did not have a current and valid health license. The health license posted on the wall had expired April 30, 2008 (N.T. 6-7).

4. Certified records from the Philadelphia Department of Licenses and Inspections indicate that the Licensee did not have a valid Preparing and Serving Food License on July 25, 2008 (N.T. 8).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On August 6, 2008, Licensee, by its servants, agents or employes, operated the licensed establishment without displaying a valid health permit or license. The license, which was displayed, expired on April 30, 2008, in violation of Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41.

PRIOR RECORD:

Licensee has been licensed since October 29, 1980, 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. 95-2131. \$350.00 fine.

1. Operated the licensed establishment without a valid health permit or license.
2. Not a bona fide restaurant in that food items were insufficient.

Citation No. 99-1033. \$283.00.

1. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store.

Citation Nos. 01-0290 and 01-0993, As Consolidated. \$650.00.

1. Failed to constantly and conspicuously expose the liquor under a transparent substance.
2. Used loudspeakers or devices whereby music could be heard outside.
3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

Citation No. 02-1148. \$400.00 and one day suspension and thereafter until restitution made.

1. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store.  
April 4, 2002.

DISCUSSION:

The Certification from the Philadelphia Department of Licenses and Inspection indicates that Licensee had never applied for a health license. Further, the Certification indicates that Licensee had no license on July 25, 2008. However, July 25, 2008 is not the relevant date. The Certification dated September 15, 2008 indicates that the establishment had not applied for a Preparing and Serving Food License. The Court understands this to mean that they had at no time applied for a health license and not that Licensee had not timely renewed. What is clear is that the officer saw a license on the wall, which had expired in April of 2008.

Fifteenth and Fairmount, Inc.  
Citation No. 08-2067

The Court finds that there was no valid health permit posted on the premises. The one posted on the premises expired April 30, 2008. The Court does not find Licensee guilty of the offense as cited. The Court is very concerned that the Certification from the city of Philadelphia is replete with errors. The Certification is not reliable and does not substantiate the charge as written. The proof does show that no valid permit was posted, which violates Section 40 Pa. Code Section 5.41.

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.

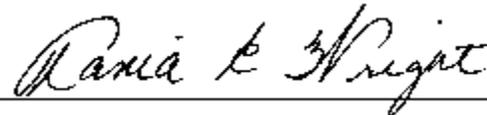
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Fifteenth and Fairmount, Inc., License Number R-AP-SS-1540, pay a fine of Two Hundred Dollars (\$200.00) 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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Fifteenth and Fairmount, Inc.  
Citation No. 08-2067

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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Fifteenth and Fairmount, Inc.