

Mailing Date: APR 6 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2235
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-379993
v.	:	
	:	LID - 43939
NEW YELLOW BIRD INC	:	
4173-75 GERMANTOWN AVE	:	
PHILADELPHIA PA 19140	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-8990	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 30, 2008. There are two counts in the citation.

The first count alleges that Licensee violated §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on August 14, 2008, by failing to display on the licensed premises documentary evidence that it meets all sanitary requirements for a public eating place.

The second count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on August 14, 2008, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items, eating utensils and dishes.

At the hearing scheduled for February 11, 2009, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period August 14 through August 19, 2008, and sent written notice of the results of its investigation to the licensed premises by certified mail on September 4, 2008 (N.T. 8-9, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on November 6, 2008 (N.T. 8-9, Exhibit B-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on December 24, 2008.

4. Liquor Enforcement Officer Christopher McGrath inspected the licensed premises on August 14, 2008. He could not find a current health permit, and Licensee's owner said that she could not remember whether they had one. There was no food in the premises. Two refrigerators were unplugged and empty. Licensee's officer stated that food sales were zero (N.T. 4-7).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since April 7, 1999, and has had prior violations as follows:

Citation No. 00-1443. \$500.00 fine.

1. Failed to require patrons to vacate the premises by the required time.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.

Citation No. 06-1591. \$1,560.00 fine and mandated RAMP training.

1. Bad checks for malt or brewed beverages. April 13, 2006.
2. Sales to a minor. May 25, 2006.

Citation No. 06-2790. \$100.00 fine.

1. Bad checks for malt or brewed beverages. September 6, 2006.

Citation No. 07-0772. \$350.00 fine.

1. Bad checks for malt or brewed beverages. February 2, 2007.

Citation No. 07-1803C. \$2,500.00 fine and RAMP training mandated.

1. Sales to a minor. July 5, 2007.

Citation No. 07-2363. \$500.00 fine.

1. Failed to maintain business records for a period of 2 years. September 6, 2007.
2. Operated without a valid health permit or license. September 6, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case. For each of the two counts, the penalty will be a fine of \$300.00 plus verification of compliance with the law.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, New Yellow Bird, Inc., License No. R-AP-SS-EHF-8990, shall pay a fine of six hundred dollars (\$600.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee shall submit verification in the form attached hereto that the premises now has sufficient food and a current and valid health permit. In the event the verification is not received within twenty (20) days from the mailing date of this order, Licensee's license will be suspended or revoked by further order.

Dated this 2nd day of April, 2009.



David L. Shenke, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION MUST BE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER, TOGETHER WITH A \$25.00 FILING FEE.

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 to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

VERIFICATION

Subject to the penalties contained in 18 Pa. C. S. §4904, relating to unsworn falsification to authorities, the undersigned officer verifies that the licensed premises contains sufficient seating accommodations for at least thirty (30) persons at tables.

Licensee also represents that attached hereto is a true and correct copy of a current and valid health permit or license as now in force and on display in the licensed premises.

Licensee acknowledges that sufficient food, cooking equipment, utensils, and dishes are to be maintained at all times this license is in operation.

Corporate Officer's Signature

Date

Submit this verification and copy of health permit to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661