

Mailing Date: OCT 15 2009

[Appeal](#)

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : Citation No. 08-2271  
LIQUOR CONTROL ENFORCEMENT :  
 : Incident No. W09-374622  
v. :  
 : LID - 46971  
TROPICAL CLUB & RESTAURANTE INC :  
T/A TROPICAL CLUB & RESTAURANTE :  
948-950 N SIXTH ST :  
READING PA 19601-1805 :  
 :  
BERKS COUNTY :  
LICENSE NO. R-AP-SS-EHF-7600 :

JUDGE SHENKLE  
BLCE COUNSEL: Roy Harkavy, Esq.  
LICENSEE: no appearance

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 29, 2008. There are four counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4493(1), on June 1, 2008, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The second count alleges that Licensee violated §467 of the Liquor Code, 47 P.S. §4-467, on June 21, 2008, by failing to constantly and conspicuously expose Restaurant Liquor License under a transparent substance on the licensed premises.

The third count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on June 21, 2008, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items.

The fourth count alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4493(12), on June 21, 2008, by failing to keep records in the licensed premises.

At the hearing scheduled for August 25, 2009, in Allentown, Pennsylvania, there was no appearance for the Licensee; therefore, the matter was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period May 19, 2008, through August 14, 2008, and sent written notice of the results of its investigation to the licensed premises by certified mail on September 8, 2008 (N.T. 5-6, Exhibit C-1).

2. A copy of this citation was mailed to Licensee on September 29, 2008 (N.T. 6, Exhibit C-2).

3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on July 9, 2009.

4. On June 1, 2008, a liquor enforcement officer entered the licensed premises at 1:15 a.m. At 12:45 a.m. the officer saw a man dancing by himself on the dance floor who was not well coordinated or attentive to the rhythm of the music. The man stumbled as he approached the bar. He bumped into a woman and did not excuse himself. He ordered beer when the one he was drinking from was still half empty, then drank from the fresh beer when it was served. He tried to light a cigarette but failed, and burnt his hand. His speech was slurred and his eyes were glassy and bloodshot. These symptoms were obvious when he obtained the service of beer which the officer saw. Half an hour later the man asked for additional beer and was denied service (N.T. 4-10).

5. On June 21, 2008, a liquor enforcement officer entered the licensed premises and saw that the liquor license hanging on the wall had expired in 2007. Licensee's president explained that he had temporary authority from the Board, but the letter he produced had expired on March 31, 2008. Licensee's president said that he thought he had a letter at his residence. The officer knew that Licensee had authority to operate because of a Supersedeas, but no evidence of this was at the licensed premises (N.T. 10-12).

6. The officer inspected the premises and found that there was no food. Licensee's president stated that they had not served food for three weeks, because he had fired the cook and was in the process of hiring a new one. Licensee's president could not produce any liquor or beer invoices (N.T. 12-13).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since February 13, 2001, and has had six prior violations:

Citation No. 03-0292. \$150.00 fine.

1. Loudspeakers could be heard outside. January 12, 2003.

Citation No. 04-0505. \$400.00 fine.

1. Loudspeakers could be heard outside. November 14 and January 31, 2004.

Citation No. 05-0962. \$100.00 fine.

1. Bad checks for malt or brewed beverages. December 10, 2004.

Citation No. 06-1152. \$1,250.00 fine. License suspended for 1 day for late payment.

1. Sales to minors. March 19, 2006.

Citation No. 07-1335. \$500.00 fine.

1. Sex discrimination. July 7, 2006.
2. Sold more than 192 fluid ounces of malt or brewed beverages in a single sale for consumption off premises. July 7, 2006, and January 14, 2007.

Citation No. 08-1132. \$550.00 fine.

1. Loudspeakers could be heard outside.  
August 25, September 8, November 30 and December 1, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count No. 1 any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in Count Nos. 2, 3 and 4 any fine must be in the \$50.00 to \$1,000.00 range. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances. Penalties are assessed as follows:

- Count No. 1 – a fine of \$1,000.00 plus mandatory R.A.M.P. – certification.
- Count No. 2 – a fine of \$200.00.
- Count No. 3 – a fine of \$300.00.
- Count No. 4 – a fine of \$100.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Tropical Club & Restaurante, Inc., t/a Tropical Club & Restaurante, License No. R-AP-SS-EHF-7600, shall pay a fine of sixteen hundred dollars (\$1,600.00) 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 comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management. In light of the fact that this license is currently inactive, this requirement is DEFERRED.

The Bureau of Licensing is requested to notify the Office of Administrative Law Judge in the event that this license becomes active again, so that an appropriate order may be entered.

Dated this 7<sup>TH</sup> day of October, 2009.

  
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David L. Shenle, J.

jb

**NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.**

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 to:

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

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Tropical Club & Restaurante, Inc.