

Mailing Date: JUL 02 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2300
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-373843
	:	
NATIONAL BARBERS	:	
SUNSHINE CLUB	:	LID - 3009
1402-04 W. OXFORD ST.	:	
2 ND & 3 RD FLOORS	:	
PHILADELPHIA PA 19121	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. CC-698	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 14, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against National Barbers Sunshine Club, License Number CC-698 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, February 3, 2009, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Sections 401(b) and 406(a)(1) of the Liquor Code, 47 P.S. Sections 4-401(b) and 4-406(a)(1), in that on May 22, 2008, Licensee, by its servants, agents or employees, sold alcoholic beverages to nonmembers.

FINDINGS OF FACT:

1. Enforcement Officer C. McKoy conducted an investigation of the licensed premises on May 22, 2008 at approximately 9:30 p.m. The officer noted that there were two licensed establishments inside of the one building. The building outside indicates that it is named Barber's Hall. As the officer entered the main entrance from the street, she walked up steps into the main building. Once inside, she found a small foyer to the right. She saw one licensed premises and then there was a set of steps which went upstairs to the second floor where she found a catering club (N.T. 5-7).

2. When the officer entered at 9:30 p.m., she went to the first floor where she found a licensed establishment which maintained a restaurant liquor license. When she entered the building, she was not requested to produce identification, however, her handbag was checked. She proceeded to the establishment which maintained an "R" License. She noted that there was a small bar to her right and that there were tables and chairs against the left side. There were bartenders on the premises and approximately fifteen to twenty patrons. She ordered a Malibu Bay Breeze alcoholic beverage. While in the establishment which maintained an "R" License, she also ordered seafood from the bartender (N.T. 7-9).

3. She paid eight to nine dollars for the meal and ate the meal while in the "R" part of the license. She remained there until approximately 10:00 p.m. and then proceeded upstairs to the second floor (N.T. 10-11).

4. As she walked out of the area of the restaurant, she entered a foyer and proceeded upstairs to what she described as the club area. The individuals who had checked her handbag when she came in were positioned at the steps. They permitted her to go upstairs (N.T. 10-13).

5. As she went upstairs, no one challenged her with regard to membership. When she went up the steps, she noted that there were two doors that led to the main entrance of the club. She walked in and there were several tables with individuals seated. There was a disc jockey on the premises. To the right there was a bar area with a bartender serving beverages (N.T. 14-15).

6. There were people seated at tables. She observed no food service or setup. She found no signage or decorations which would indicate that there was an affair going on (N.T. 15).

7. She recalled specifically that there was one bartender and believed that there was a second bar in the rear of the premises but she never saw a bartender in that area. There was no food service in the club area (N.T. 18).

8. The officer saw approximately fifty or so patrons on the second floor (N.T. 18-19).

9. While in the club area, the officer ordered a Malibu Bay Breeze. It was served to her from the bar to the right from the bartender that was behind the bar. She paid the bartender six dollars for the drink (N.T. 19-20).

10. The officer departed the club area at 10:40 p.m. (N.T. 21).

11. The officer made approximately three other visits to the licensed premises. When she arrived on June 22, 2008, she went to the "R" License initially and then attempted to go upstairs to the catering club, but was told there was a private party and she could not go. That would have been at approximately 10:00 or 11:00 in the evening (N.T. 21-22).

12. The officer visited the premises again in the beginning of July or perhaps around July 17, 2008 at approximately 11:30 p.m. The entire premises was closed on that date. She was unable to enter the building (N.T. 22-23).

13. The officer made a visit on August 22, 2008 when she performed a routine inspection of the "C" License area. On August 22, 2008, she arrived at approximately 3:30 p.m. She went upstairs to the catering club. She was with Jacob Adams who is an officer of the club (N.T. 23-24).

14. The officer asked Mr. Adams for the catering club records between May and June of 2008. He provided her those records. She reviewed the records to see if there were any events on those dates and the dates of her visits. She reviewed the records at the club. She could not find any event for May 22, 2008 (N.T. 24-25).

15. The next day, August 23, 2008, she conducted a routine inspection of the "R" License. She arrived at approximately 4:00 p.m. and again met with Mr. Jacob Adams. Mr. Adams claimed that he and his wife were owners of the "R" License (N.T. 26-27).

16. Mr. Adams was provided with contact information for the officer. As of the date of the hearing, he had not provided her with any additional information (N.T. 28-29).

17. The officer indicated that she walked about the second floor premises and saw a main bar area and a small bar area in a room with a pool table and another bar area (N.T. 33-34).

18. Mr. Adams provided approximately twenty to thirty documents indicating catered events (N.T. 36).

19. The officer left Mr. Adams with a routine inspection report (N.T. 38 and Exhibit L-1).

20. The officer did not indicate on that report that there were any catering events on May 22, 2008 (N.T. 38-39).

21. A written request for records was left with Mr. Adams, however, the officer did indicate that she set an appointment and told him which dates she needed the records for and did meet with him and he did not provide those records (N.T. 40).

22. Jacob Adams is the secretary/treasurer of the licensed premises and has filled that position for fifteen years. He is also a member of the club (N.T. 47-48).

23. It is Mr. Adams' responsibility as the secretary/treasurer to maintain records (N.T. 50).

24. Mr. Adams purchases the beverages and food for the establishment (N.T. 51).

25. Mr. Adams produced a document that he had a contract for a catered event running from April to August from 7:00 to 12:00 every Tuesday and Thursday and that the club provided beverages. The person renting the hall would be responsible for the disc jockey and for food set up (N.T. 53-54).

CONCLUSIONS OF LAW:

On May 22, 2008, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Sections 401(b) and 406(a)(1) of the Liquor Code, 47 P.S. Sections 4-401(b) and 4-406(a)(1).

PRIOR RECORD:

Licensee has been licensed since August 6, 1958, 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. 92-2470. \$1,000.00 fine.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 3:30 a.m.
3. Sales between 3:00 a.m. and 7:00 a.m. (Dismissed by A.L.J.)

Citation No. 93-2278. \$2,000.00 fine and four days suspension. Licensee's appeal to Board dismissed. Fine not paid and license suspended an additional 20 days and thereafter until fine paid. Licensee's request for reconsideration vacated 20 day suspension.

1. Sales between 3:00 a.m. and 7:00 a.m.
2. Sales to nonmembers without prior arrangement.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
4. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 3:30 a.m.

Citation No. 94-0206. \$1,000.00 fine and three days suspension. Fine not paid and license suspended an additional 10 days and thereafter until fine paid. Licensee's request for reconsideration vacated 10 day suspension.

1. Unexplained shortage in reported cash income.
2. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
3. Organization not operated for the mutual benefit of the entire membership.

Citation No. 94-2266. \$1,000.00 fine and five days suspension.

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
2. Operated the licensed establishment without a valid health permit or license. (Withdrawn by Bureau)

DISCUSSION:

The Court remains unconvinced that any catered event was scheduled or occurred on February 3, 2009, the night of the officer's visit to the premises. There was no indication through signage, the host or posted announcement that there was any kind of catered event. In addition, the officer asked for documentation and was not provided adequate documentation for the dates in question. In that the Licensee is required to document the catered event, the oneness is on the Licensee to present to the officer evidence that this was a scheduled catered event.

Under the circumstances, the Court finds the Licensee in violation for sales to nonmembers on May 22, 2008. The so called catered event apparently had no restrictions and no particular designation as to who the guests might be. This is not the way a catered event is intended to function at a licensed club. The Licensee's last violation was in 1994, therefore, a moderate monetary penalty shall be imposed.

National Barbers Sunshine Club
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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.

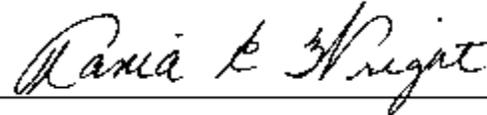
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, National Barbers Sunshine Club, License Number CC-698, pay a fine of Four Hundred Dollars (\$400.00) 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 22ND day of JUNE, 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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Citation No. 08-2300

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, 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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