

Mailing Date: MAR 10 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2382
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-377538
v.	:	
	:	LID - 56713
7681 SMOKEEATERS INC	:	
7681 FRANKFORD AVE	:	
PHILADELPHIA PA 19136-3634	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-9122	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.  
For Licensee: no appearance.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 7, 2008. The citation alleges that Licensee violated §§401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), on July 17, 2008, by selling, furnishing or giving liquor for consumption off premises.

At the hearing scheduled for January 28, 2009, in Plymouth Meeting, 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 July 3 through September 23, 2008, and sent written notice of the results of its investigation to the licensed premises by certified mail on September 23, 2008 (N.T. 8-9, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on October 7, 2008 (N.T. 10, 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 12, 2008.

4. Liquor Enforcement Officer Julie Kohler visited the licensed premises at about 9:55 p.m. on Thursday, July 17, 2008. She spoke to a bartender, and asked if she could order a bottle of Miller Lite beer and then take it outside to a seating area on the sidewalk and drink it. The bartender said she could, as long as the purchase took place inside. The officer purchased the beer and took it outside (N.T. 4-6).

5. Officer Kohler shortly realized that it is not illegal to purchase beer "to go." She finished the beer and went back inside. She asked the same bartender if it would be all right to purchase a vodka and tonic mixed drink and take it outside. The bartender said "absolutely" and prepared the drink in a glass. The officer asked if it was okay to take the glass outside, and the bartender assured her it was. Officer Kohler took the mixed drink she had purchased outside and drank it (N.T. 6-7).

6. Officer Kohler had reviewed the file in the Bureau's District Office and had seen that there was no record of a licensed outside seating area at this premises. She also called the PLCB and confirmed the same. An attestation by a custodian of official records for the Board states that this Licensee "did not possess a valid license to operate outside of business on July 17, 2008." (N.T. 7, Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since September 29, 2006, and has had two prior violations:

Citation No. 07-1696X. \$500.00 fine. Licensee suspended 1 day for late payment.

1. Bad checks for malt or brewed beverages. April 13 and 26, 2007.

Citation No. 07-2071. \$150.00 fine. Licensee suspended 1 day for late payment.

1. Loudspeakers could be heard outside. July 28, 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.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 7681 Smokeeaters, Inc., License No. R-AP-SS-9122, shall pay a fine of three hundred dollars (\$300.00) 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.

Dated this 2ND day of MARCH, 2009.

  
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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7681 Smokeeaters, Inc.