

Mailing Date: APR 20 2009

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

|                            |   |                         |
|----------------------------|---|-------------------------|
| PENNSYLVANIA STATE         | : |                         |
| POLICE, BUREAU OF          | : | Citation No. 08-2401    |
| LIQUOR CONTROL ENFORCEMENT | : |                         |
|                            | : | Incident No. W04-380883 |
| v.                         | : |                         |
|                            | : | LID - 28399             |
| EMERALD ENTERPRISES OF     | : |                         |
| AMERICA INC                | : |                         |
| 2329 PENN AVENUE           | : |                         |
| PITTSBURGH PA 15222-4505   | : |                         |
|                            | : |                         |
|                            | : |                         |
|                            | : |                         |
| ALLEGHENY COUNTY           | : |                         |
| LICENSE NO. R-AP-SS-1271   | : |                         |

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Emily Gustave, Esquire

For Licensee  
No Appearance.

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 10, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Emerald Enterprises of America, Inc., License Number R-AP-SS-1271 (hereinafter Licensee).

The citation contains two counts.

The first count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on September 7, 2008, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on September 7, 2008, Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

An administrative hearing was conducted on March 24, 2009, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on September 7, 2008, and completed its investigation on September 7, 2008. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated September 23, 2008, which was sent by certified mail and received by Licensee. (Exhibit C-3)
3. The citation was issued on October 10, 2008, and was sent by certified mail and received by Licensee on October 22, 2008. (Exhibits C-2, C-4)

COUNTS 1 AND 2

4. On September 7, 2008 at 2:45 a.m., Liquor Enforcement Officer S. P. Bonadio approached Licensee's premises and observed through the front glass door approximately 30 patrons many of whom were in possession of alcoholic beverages. (N.T. 10)
5. Officer Bonadio then called for assistance. In response, Officer Donovan with the Pittsburgh Police Department arrived outside the premises at 3:00 a.m. (N.T. 10)
6. At 3:05 a.m., Liquor Enforcement Officer Bonadio and Pittsburgh Police Officer Donovan entered Licensee's premises through the unlocked front door. (N.T. 10)

7. Upon entering, Officer Bonadio counted 37 patrons most of whom were in possession of plastic cups of beer. Two of the patrons were observed at the bar in possession of partially filled 12-ounce bottles of Miller Lite beer. (N.T. 10)

8. Officer Bonadio identified Licensee's manager on duty as DeClan Gilbert as well as a female bartender, a doorman and two waitresses. Officer Bonadio asked Manager DeClan Gilbert what the legal closing time was. Mr. Gilbert replied, "You got me. These patrons came over from the Irish Festival and I had a hard time getting them to leave." (N.T. 10-11)

9. Officers Bonadio and Donovan departed Licensee's premises at 3:15 a.m. after the patrons had departed in an orderly fashion. (N.T. 12)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On September 7, 2008, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code.

3. On September 7, 2008, Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violations as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the types found in this case.

EMERALD ENTERPRISES  
OF AMERICA, INC.  
Citation Number 08-2401

In consideration of the fact that Counts one and two of this citation arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

In mitigation, the record discloses that this citation represents Licensee's first violations.

For the foregoing reasons, a penalty shall be imposed in the amount of \$350.00.

ORDER:

THEREFORE, it is hereby ordered that Emerald Enterprises of America, Inc., License Number R-AP-SS-1271, pay a fine of \$350.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 16th day of April, 2009.



Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

EMERALD ENTERPRISES  
OF AMERICA, INC.  
Citation Number 08-2401

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

Citation No. 08-2401  
Emerald Enterprises  
of America, Inc.