

Mailing Date: NOV 05 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2767
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-381977
	:	
CH & JI INC.	:	
6525 RISING SUN AVE.	:	LID - 53541
PHILADELPHIA PA 19111-5246	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-OPS-873	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 25, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CH & JI, Inc., License Number R-SS-OPS-873 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, May 13, 2009, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 15.62(a), in that on October 22, 2008, Licensee, by its servants, agents or employes, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on September 27, 2008 and ended October 22, 2008. A notice of violation letter dated November 5, 2008 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on November 7, 2008. A citation was sent to the licensed premises which was dated November 25, 2008 by certified mail, return receipt requested. That mailing was signed as received on November 28, 2008. A citation hearing notice was sent to the licensed premises by the Office of Administrative Law Judge on March 26, 2009 by certified mail, return receipt requested and by first class mail. That mailing was signed as received on March 28, 2009 (N.T. 8-9 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. He completed a suspension check relative to Citation No. 07-2923 (N.T. 6).

3. The suspension was to begin on October 20, 2008 and conclude on October 23, 2008. On October 20, 2008, the officer visited the licensed premises at approximately 4:00 p.m. and remained in the area until approximately 4:20 p.m. On October 21, 2008, the officer went to the licensed premises at 7:00 p.m. and remained there until approximately 7:50 p.m. On October 22, 2008, the officer went to the premises at 10:00 p.m. and remained until approximately 10:45 p.m. (N.T. 7).

4. On October 20 and 21, 2008, the officer noted that the premises was closed, locked and was dark. She saw no signs of business being conducted on the premises. The notice of suspension was on the side entrance. On October 22, 2008, she returned to the premises and there was no suspension placard, but the premises was still closed (N.T. 7).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On October 22, 2008, Licensee, by its servants, agents or employes, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension, in violation of Section 15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 15.62(a).

PRIOR RECORD:

Licensee has been licensed since September 13, 2004, and has a record of prior violations as follows:

Citation No. 05-2443. One day suspension.

1. Sales on Sunday after 2:00 a.m.
October 16, 2005.

Citation No. 06-2035. \$450.00 fine.

1. Failed to keep records on the licensed premises.
July 25, 2006.
2. Failed to maintain coil cleaning records.
July 25, 2006.
3. Not a bona fide restaurant in that food items were insufficient.
July 25, 2006.

Citation No. 07-2923. \$400.00 fine and three days suspension. Fine not paid and license suspended one day and thereafter until fine paid.

1. Sales between 2:00 a.m. and 7:00 a.m.
October 6 and 27, 2007.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
October 6 and 26, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
October 6 and 27, 2007.
4. Permitted patrons to enter the premises between 2:30 a.m. and 7:00 a.m. when they did not possess an extended hours food permit.
October 6 and 27, 2007.

Citation No. 08-1741. \$100.00 fine.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.
May 21, 2008.

DISCUSSION:

While it appears the Licensee attempted to comply with the Order, they did not put the placard on the inside of a window, where no one could tamper with it, but instead put it on the outside of the premises. On October 20 and 21, 2008, the officer saw the placard and noted that the premises was closed. On October 22, 2008, the suspension placard was no longer visible. Under the circumstances, a monetary penalty shall be imposed.

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.

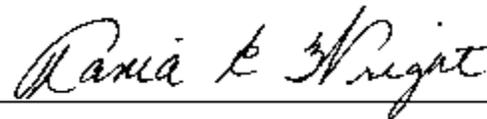
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, CH & JI, Inc., License Number R-SS-OPS-873, pay a fine of One Hundred Fifty Dollars (\$150.00) 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 26TH day of October, 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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CH & JI, Inc.
Citation No. 08-2767

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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CH & JI, Inc.