

Mailing Date: DEC 17 2009

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

| | | |
|------------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 08-2946 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | |
| v. | : | Incident No. W01-380287 |
| | : | |
| THE UNITED INDEPENDENT | : | |
| ITALIAN AMERICAN CLUB OF THE | : | LID - 37932 |
| CITY OF PHILADELPHIA | : | |
| 7215 TORRESDALE AVE. | : | |
| TACONY | : | |
| PHILADELPHIA PA 19135-1314 | : | |
| | : | |
| PHILADELPHIA COUNTY | : | |
| LICENSE NO. C-1902 | : | |

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 16, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against The United Independent Italian American Club of the City of Philadelphia, License Number C-1902 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, May 27, 2009, pursuant to requisite and appropriate hearing notice.

The citation charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. Section 4-406(a)(1), in that on August 24, 2008, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation which was assigned on August 25, 2008 and completed October 27, 2008. A notice of violation letter was sent to the licensed premises on November 26, 2008 by certified mail, return receipt requested. The mailing was returned to the sender "unclaimed." A citation hearing notice was sent to the licensed premises on December 16, 2008 by certified mail, return receipt requested. It was signed as received on December 16, 2008. A citation hearing notice was sent to the licensed premises on February 4, 2009 by certified mail, return receipt requested, as well by first class mail and to the attorney of record.

2. The officer's first visit to the licensed premises was July 25, 2008. On July 25, 2008, he and another officer were completing another investigation when they noticed patrons exiting the licensed premises. The officer made a subsequent visit to the premises on August 24, 2008. The matter was officially assigned to him on August 25, 2008. The officer completed his investigation on October 27, 2008. The officer made no subsequent visits to the premises, but did meet with his supervisor and the legal department concerning the matter during the investigative period (N.T. 20-21, 24-25, 34-35 and Exhibit B-1).

3. The Bureau officer made his first visit to the premises on July 25, 2008 at approximately 3:30 a.m. He made observations from outside of the premises. The door was open and he could see that there were patrons inside and that there was alcohol in the bar (N.T. 8-9).

4. On August 24, 2008, the officer arrived at the premises at approximately 2:00 a.m. At 2:10 a.m., he approached the front door where he met a doorman who was checking identification. The doorman was wearing a shirt with "Yik Yak" on the front, the trade name of the licensed premises. He showed the doorman his driver's license (N.T. 9-10).

5. The officer remained undercover and at this time he was allowed to go through the door. Inside the door, he was required to pay a five dollar cover charge. An employee was also wearing a "Yik Yak" shirt (N.T. 11).

6. At 2:20 a.m., the officer approached the bartender and requested a twelve ounce bottle of Miller Lite beer. The bartender was also wearing a "Yik Yak" shirt and was located behind the bar. The officer received the drink and paid \$4.00 for it (N.T. 12).

The United Independent Italian
American Club of the City of Phila.
Citation No. 08-2946

7. At 2:45 a.m., the officer ordered a twelve ounce bottle of Miller Lite beer and was charged \$4.00 (N.T. 13).

8. At 3:05 a.m., another employee began working from the back of the premises telling everyone that they had to start leaving. He pushed people forward to the front telling them that they needed to exit. Roughly five minutes later, which would have been 3:10 a.m., the officer observed money being exchanged at the bar. People poured bottles of beer to persons who were leaving the premises (N.T. 13-14).

9. The officer left the premises at approximately 3:15 a.m. and remained at his vehicle as they emptied the premises. The officer left the area of the premises at approximately 3:30 a.m. (N.T. 14).

10. The officer is not a member of the licensed club and has never been a member of the club. When he presented identification at the door, he did not see anyone check his name against a membership list (N.T. 14-15).

11. The officer made a visit to the club on Sunday, September 27, 2008 at approximately 2:10 a.m. He was questioned as to membership and was not allowed inside the club (N.T. 15).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On August 24, 2008, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. Section 4-406(a)(1).

PRIOR RECORD:

Licensee has been licensed since April 5, 1934, 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. 99-1825. \$400.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
August 6, 1999.

Citation No. 04-1780. \$850.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
On 114 dates from January 8 to August 5, 2004. (All dates except April 23, 2004 withdrawn by Bureau)
2. Noisy and/or disorderly operation. (Withdraw by Bureau)
On 43 dates from January 8 to August 4, 2004.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.
On 10 dates from March 12 to August 15, 2004.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
On 17 dates from March 4 to August 15, 2004.
5. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.
August 15, 2004.
6. Sales to nonmembers.
September 3, 2004.

Citation No. 06-2108. \$2,900.00 fine.

1. Sales to nonmembers.
March 17, April 28 and May 14, 2006.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
March 17 and May 14, 2006.
3. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.
March 17, 2006.
4. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.
March 17 and May 14, 2006.
5. Sales between 3:00 a.m. and 7:00 a.m.
March 17 and May 14, 2006.
6. Sales to minors. (Dismissed by ALJ)
May 14, 2006.
7. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
January 26, 28, March 18, May 11, 12 and 14, 2006.

Citation No. 07-0451. \$3,300.00 fine.

1. Sales to nonmembers.
October 2, 22, December 17, 2006 and January 14, 2007.
2. Sales between 3:00 a.m. and 7:00 a.m.
October 22, December 17, 2006 and January 14, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m.
December 17, 2006 and January 14, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
December 17, 2006 and January 14, 2007.
5. Permitted patrons to enter the premises between 3:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.
December 17, 2006.
6. Possessed or operated gambling devices or permitted gambling on the licensed premises.
January 14, 2007.

Citation No. 07-2031. \$2,500.00, 30 days suspension and R.A.M.P. training mandated.

1. Sales to nonmembers.
April 20, May 17, June 14 and 28, 2007.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
March 17, 31, April 20, May 17, June 9, 14 and 28, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m.
March 31, April 20, May 17, June 9, 14 and 28, 2007.
4. Sales between 3:00 a.m. and 7:00 a.m.
March 31, April 20, May 17, June 9, 14 and 28, 2007.
5. Sales to minors.
June 28, 2007.
6. Permitted patrons to enter the premises between 3:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.
May 17 and June 14, 2007.
7. Minors frequenting.
June 28, 2007.

DISCUSSION:

Timeliness of Notice of Violation Letter

Counsel argues that the notice was untimely based upon the fact that the case was assigned on August 25, 2008, the investigation completed on October 27, 2008, and notice given November 26, 2008. The activity which resulted in the opening of the investigation and the issuance of a citation took place on August 24, 2008. There were no further visits to the premises after that date. The officer explained that on his July 25, 2008 visit to the licensed premises, he and a second officer were completing an investigation of another premises when they noted patrons coming out of this establishment. The officer made a subsequent visit to the premises on August 24, 2008 whereupon he found a violation. After reviewing the matter with his supervisor, the case was assigned to him on August 25, 2008. From that point, there were no further visits to the premises. The case, according to the notice of violation was closed on October 27, 2008 and a notice of violation letter was submitted on November 26, 2008. The officer testified that during that time, he was talking to the legal department and his supervisor and completed whatever was necessary to close the case.

The Court finds that there was minimal activity, but there was some activity which occurred during the investigation of the premises, which warranted the case closing at the end of October. Simply because there were no further visits to the premises, that does not mean that there was no investigative or administrative activity which would warrant the case being open. There were about two months between the officer's initial visit to the premises and the Licensee receiving notice of the violation. The Court encourages diligence, however, that is not an unreasonable period of time.

Counsel argues that the actual close of the investigation occurred at an earlier date on or subsequent to the Bureau's last visit to the premises. The Court does not agree.

Sales to Nonmembers

The officer visited the premises on August 24, 2008 and was able to purchase alcoholic beverages when he was not a member of the club. In fact, on this date the club did not appear to be operating as a club. They did not seem to abide by any of the rules and regulations which are imposed upon those holding a club license.

In reviewing the prior record of the licensed premises, it is noted that it is extremely long and sordid. There are numerous violations for after hours sales and sales to nonmembers. Under the circumstances, a \$1,000.00 fine and three day suspension shall be imposed.

The United Independent Italian
American Club of the City of Phila.
Citation No. 08-2946

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, The United Independent Italian American Club of the City of Philadelphia, License Number C-1902, pay a fine of One Thousand Dollars (\$1,000.00) 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.

IT IS ALSO ORDERED that the Club Liquor License of The United Independent Italian American Club of the City of Phila., License Number C-1902, be suspended for a period of three (3) days **BEGINNING** at 7:00 a.m. on Monday, March 15, 2010 and **ENDING** at 7:00 a.m. on Thursday, March 18, 2010.

Licensee is directed on Monday, March 15, 2010 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

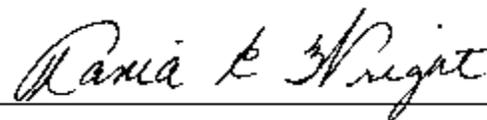
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Thursday, March 18, 2010 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 4TH day of December, 2009.



Tania E. Wright, J.

The United Independent Italian
American Club of the City of Phila.
Citation No. 08-2946

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.

mm

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

Citation No. 08-2946
The United Independent Italian