

Mailing Date: NOV 06 2009

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

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| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 09-0036 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | |
| v. | : | Incident No. W01-386471 |
| | : | |
| CIOCCA LLC | : | |
| T/A ADRIANO'S | : | LID - 54003 |
| 13023 BUSTLETON AVE. | : | |
| PHILADELPHIA PA 19116-1672 | : | |
| | : | |
| | : | |
| PHILADELPHIA COUNTY | : | |
| LICENSE NO. R-15472 | : | |

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 21, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Ciocca, LLC, t/a Adriano's, License Number R-15472 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, May 19, 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 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41, in that on December 19, 2008, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2008.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on December 19, 2008 and ended on December 23, 2008. A notice of violation letter dated January 6, 2009 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on January 9, 2009. A citation dated January 21, 2009 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was returned unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on by certified mail, return receipt requested, and by first class mail on April 1, 2009. That mailing was returned unclaimed (N.T. 8-10 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. He arrived at the premises on December 19, 2008, at approximately 2:35 p.m. The premises was open and operating (N.T. 5).

3. The officer identified himself to a hostess on the premises. He inquired as to whether they were operating, in that there were no patrons on the premises. The hostess indicated that they were open. The officer informed her that he was going to conduct a routine inspection of the premises (N.T. 6).

4. The hostess then retrieved another person from the kitchen who indicated that he was in charge. That person told the officer that the president of the licensed premises, Adriano Ciocca, was on his way to the premises. Approximately five minutes later he arrived and the officer then spoke with Mr. Ciocca (N.T. 6).

5. The officer conducted his inspection and determined that the premises did not have a health permit (N.T. 6-7).

6. Certified records from the city of Philadelphia indicate that the establishment has never applied for a Preparing and Serving Food License. That certification was dated January 9, 2009 (N.T. 8-10 and Exhibit B-3).

Ciocca, LLC
t/a Adriano's
Citation No. 09-0036

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On December 19, 2008, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2008, in violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41.

PRIOR RECORD:

Licensee has been licensed since March 16, 2005, and has a record of prior violations as follows:

Citation No. 06-0082. \$1,000.00 fine.

1. Sales after the license expired and had not been renewed and/or validated.
December 7, 2005.

DISCUSSION:

Sometime after the time of inspection, Licensee acquired a health permit from the city of Philadelphia. Under the circumstances, a moderate 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, Ciocca, LLC, t/a Adriano's, License Number R-15472, 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.

IT IS FURTHER ORDERED that Licensee, Ciocca, LLC, t/a Adriano's, License Number R-15472, submit a copy of a current and valid health permit within twenty (20) days from the mailing date of said Order. If said documentation is not submitted within twenty (20) days from the mailing date of this Order, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

Ciocca, LLC
t/a Adriano's
Citation No. 09-0036

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

Dated this 28TH day of November, 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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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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Ciocca, LLC