

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0142
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-386386
v.	:	
	:	LID - 46971
TROPICAL CLUB & RESTAURANTE INC	:	
T/A TROPICAL CLUB & RESTAURANTE	:	
948-950 N SIXTH ST	:	
READING PA 19601-1805	:	
	:	
BERKS COUNTY	:	
LICENSE NO. R-AP-SS-EHF-7600	:	

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 2, 2009. The citation alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), on January 9, 2009, by failing to keep records on the licensed premises.

At the hearing scheduled for August 25, 2009, in Allentown, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period December 23, 2008, through January 9, 2009, and sent written notice of the results of its investigation to the licensed premises by certified mail on January 9, 2009 (N.T. 14-15, Exhibit C-1).
2. A copy of this citation was mailed to the licensed establishment by certified mail on February 2, 2009 (N.T. 15, Exhibit C-2).
3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on July 9, 2009

4. On January 9, 2009, a liquor enforcement officer inspected the licensed premises and found that there were beer and liquor invoices for only six months, instead of the two years
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required. The other deficiencies found in the inspection of June 21, 2008, which was the subject of Citation No. 08-2271, had been corrected (N.T. 15-16).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since February 13, 2001, and has had six prior violations:

Citation No. 03-0292. \$150.00 fine.

1. Loudspeakers could be heard outside. January 12, 2003.

Citation No. 04-0505. \$400.00 fine.

1. Loudspeakers could be heard outside. November 14 and January 31, 2004.

Citation No. 05-0962. \$100.00 fine.

1. Bad checks for malt or brewed beverages. December 10, 2004.

Citation No. 06-1152. \$1,250.00 fine. License suspended for 1 day for late payment.

1. Sales to minors. March 19, 2006.

Citation No. 07-1335. \$500.00 fine.

1. Sex discrimination. July 7, 2006.
2. Sold more than 192 fluid ounces of malt or brewed beverages in a single sale for consumption off premises. July 7, 2006, and January 14, 2007.

Citation No. 08-1132. \$550.00 fine.

1. Loudspeakers could be heard outside.
August 25, September 8, November 30 and December 1, 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.

I am imposing the minimum penalty in this case because I disapprove of the Bureau's decision to cite Licensee in these circumstances, although I am nevertheless obliged to impose a penalty. The Bureau inspected the premises on June 21, 2008, and this resulted in the issuance of Citation No. 08-2271. Licensee's president did not keep business records as he should have, and in the adjudication of that case (concurrently with this one) the Licensee was penalized.

Responding to the sanction exactly as he should have, Licensee's president corrected the deficiencies which had been noted and began keeping appropriate business records. Now comes the Bureau on January 9, 2009, and it notices that there are only six months' worth of records.

What did they expect? That Licensee would have gone to the state store and his malt beverage supplier to attempt to reconstruct the missing records, on the chance that the Bureau might return and want to examine them? One penalty for this error is quite enough.
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ORDER

THEREFORE, it is hereby ORDERED that Licensee, Tropical Club & Restaurante, Inc., t/a Tropical Club & Restaurante, License No. R-AP-SS-EHF-7600, shall pay a fine of fifty dollars (\$50.00) 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 7TH day of October, 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

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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Tropical Club & Restaurante, Inc.