

Mailing Date: NOV 06 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0226
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-385598
	:	
SHORE ROAD INC.	:	
6266 JACKSON ST.	:	LID - 52148
PHILADELPHIA PA 19135-3229	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-11262	:	

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 February 10, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Shore Road, Inc., License Number R-AP-SS-EHF-11262 (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 3, 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 3, 2008 and ended January 20, 2009. A notice of violation letter dated January 28, 2009 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on January 29, 2009. A citation dated February 10, 2009 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on February 13, 2009. A citation hearing notice was sent to the licensed premises by the Office of Administrative Law Judge by certified mail, return receipt requested and by first class mail. The certified mailing was returned to the sender unclaimed (N.T. 10-11 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement was assigned to investigate the licensed premises on December 3, 2008. The investigation came from the Bureau of Alcohol Education by way of a request for a R.A.M.P. compliance check. On Wednesday, December 3, 2008, the officer went to the premises and arrived at approximately 2:15 p.m. Upon entering, she noted that there were four patrons being rendered service by a male bartender (N.T. 5-6).

3. The officer advised the bartender that she was there to conduct a routine inspection and informed him that he was mandated by a previous citation to have certification and that such records indicated that certification had not been completed (N.T. 6-7).

4. The bartender indicated that R.A.M.P. training had been postponed with permission from a R.A.M.P. employee because of a personal emergency (N.T. 7).

5. The officer completed the routine inspection and noted that the health permit had expired on April 30, 2008. Certified records from the city of Philadelphia Department of Licenses and Inspections indicate that the renewal bill was paid on December 8, 2008 (N.T. 8-11 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

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On December 3, 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 January 22, 2004, and has a record of prior violations as follows:

Citation No. 08-0116. \$1,500.00 fine and R.A.M.P. Training Mandated.

1. Used loudspeakers or devices whereby music could be heard outside.
October 13 and 14, 2007.
2. Sales to a visibly intoxicated person.
December 7, 2007.

DISCUSSION:

Under the circumstances, a monetary penalty shall be imposed. Licensee will be required to present a valid health permit.

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:

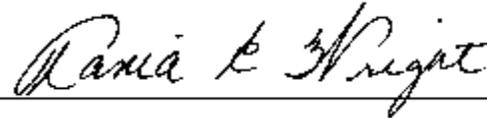
THEREFORE, it is hereby Ordered that Licensee, Shore Road, Inc., License Number R-AP-SS-EHF-11262, pay a fine of Three Hundred Dollars (\$300.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee, Shore Road, Inc., License Number R-AP-SS-EHF-1126, 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.

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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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