

Mailing Date: JUL 02 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0263
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-388117
	:	
EAST FALLS BEVERAGE LLC	:	
4024 RIDGE AVE.	:	LID - 55901
PHILADELPHIA PA 19129	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. D-SS-451	:	

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 February 18, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against East Falls Beverage, LLC, License Number D-SS-451 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, April 29, 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 contains two counts.

The first count charges Licensee with violation of Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d), in that from December 23, 2008 through January 26, 2009, Licensee failed to comply with the Order of the Administrative Law Judge at Citation No. 08-0352 mandating responsible alcohol management.

The second count charges Licensee with violation of Sections 492(3) and 493(16) of the Liquor Code, 47 P.S. Sections 4-492(3) and 4-493(16), in that on January 26, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2008 and had not been renewed and/or validated.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on January 26, 2009 and ended January 26, 2009. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested on January 30, 2009. That mailing was signed as received. A citation dated February 18, 2009 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on March 12, 2009 by certified mail, return receipt requested, and by first class mail. That mailing was signed as received (N.T. 9-10 and Exhibits B-1 and B-2).

2. Officer T. Amato visited the licensed premises on January 26, 2009 pursuant to a request from the Pennsylvania Liquor Control Board Responsible Alcohol Management Program (R.A.M.P.). According to an Order from the Office of Administrative Law Judge, Citation No. 08-0352, the Licensee was to complete R.A.M.P. training and be certified ninety days from the date of that Order which would have been December 22, 2008 (N.T. 5-6).

3. Officer Amato visited the premises on January 26, 2009 at 3:00 p.m. The premises was open and operating. She noted that there were two employees on the premises. According to the records of the Pennsylvania Liquor Control Board, the license was currently inactive in that it expired October 31, 2008 (N.T. 6 and Exhibit B-3).

4. The officer approached the counter and ordered a case of ten ounce cans of Budweiser beer. She paid \$15.25 for the purchase. She handed the counter person a twenty dollar bill and received \$4.75 in change. After taking possession of the beer, she identified herself to an employee, Jared Larrick, who had sold her the beer. She asked to speak to the person in charge and she was directed to Doug Perry, another employee (N.T. 6-7).

5. Officer Amato informed Mr. Perry that initially the investigation was regarding R.A.M.P compliance, but that she had also found that the license was inactive (N.T. 7-8).

6. Officer Amato instructed the Licensee's employees to cease all sales until the license became active and she further indicated that they would receive a citation with regard failing to comply with the Order for R.A.M.P. certification and for sales without a license (N.T. 8).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - From December 23, 2008 through January 26, 2009, Licensee failed to comply with the Order of the Administrative Law Judge at Citation No. 08-0352 mandating responsible alcohol management, in violation of Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d).

Count No. 2 -On January 26, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2008 and had not been renewed and/or validated, in violation of Sections 492(3) and 493(16) of the Liquor Code, 47 P.S. Sections 4-492(3) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since March 7, 2006, and has a record of prior violations as follows:

Citation No. 07-1728X. \$100.00 fine.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.  
May 9, 17 and 25, 2007.

Citation No. 08-0352. \$1,250.00 fine and R.A.M.P. training mandated.

1. Sales to a minor.  
January 19, 2008.

Citation No. 09-0166X. \$200.00 fine.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.  
October 17, 2008.

DISCUSSION:

Licensee failed to become R.A.M.P. certified, and had the audacity to be operating without a valid license. No temporary authority to operate had been issued as of January 26, 2009.

Licensee has a prior record but has no prior offenses of this nature. In addition, there is a transfer pending. Under the circumstances, moderate monetary penalties 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 Count No. 1 of this case.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 2 of this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$250.00.  
Count No. 2 - \$1,250.00.

Accordingly, we issue the following

ORDER:

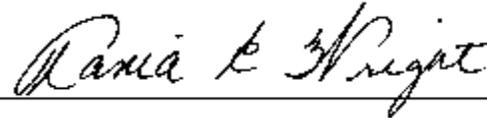
THEREFORE, it is hereby Ordered that Licensee, East Falls Beverage, LLC, License Number D-SS-451, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that the requirements set forth in Section 471.1 of the Liquor Code, pertaining to Licensee's mandatory certification through the Pennsylvania Liquor Control Board Responsible Alcohol Management Program (R.A.M.P.) are hereby SUSPENDED pending completion of the transfer. If the transfer is not completed within 90 days of the mailing date of this Order, the matter will be reviewed for appropriate action, which may include reinstatement of the requirement for R.A.M.P. certification.

East Falls Beverage, LLC  
Citation No. 09-0263

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

Dated this 26<sup>TH</sup> day of JUNE, 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

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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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East Falls Beverage, LLC