

Mailing Date: SEP 29 2009

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : Citation No. 09-0985  
LIQUOR CONTROL ENFORCEMENT :  
 : Incident No. W01-391193  
v. :  
 : LID - 56405  
BELLA NOCHE INC :  
2100 ST VINCENT ST :  
PHILADELPHIA PA 19149-1333 :  
 :  
PHILADELPHIA COUNTY :  
LICENSE NO. R-AP-SS-OPS-EHF-8515 :

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE: no appearance.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 5, 2009. The citation alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on March 27, 2009, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items.

At the hearing scheduled for July 29, 2009, in Plymouth Meeting, 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 March 17 through April 2, 2009, and sent written notice of the results of its investigation to the licensed premises by certified mail on April 17, 2009 (N.T. 8-9, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on May 5, 2009 (N.T., 9-10 Ex. B-2).
3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on June 10, 2009
4. On March 27, 2009, a liquor enforcement officer inspected the licensed premises, which was open for business. There was no food in the premises (N.T. 5-7).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 27, 2006, and has had no prior violations.

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.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bella Noche, Inc., License No. R-AP-SS-OPS-EHF-8515, shall pay a fine of three hundred dollars (\$300.00) 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.

IT IS FURTHER ORDERED that Licensee shall submit verification in the form attached hereto that the premises now has sufficient food, as required by §102 of the Liquor Code. In the event the verification is not submitted within twenty (20) days from the mailing date of this order, Licensee's license will be suspended or revoked.

Dated this 21<sup>ST</sup> day of SEPTEMBER, 2009.



David L. Shenkle, 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

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The fine must be paid by cashier's check, certified check or money order. Personal and business checks are not acceptable unless bank certified. 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

**VERIFICATION**

Subject to the penalties contained in 18 Pa. C. S. §4904, relating to unsworn falsification to authorities, the undersigned officer verifies that the licensed premises now has sufficient food, utensils and dishes to accommodate people.

Licensee acknowledges that sufficient food, cooking equipment, utensils, and dishes are to be maintained at all times this license is in operation.

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Corporate Officer's Signature

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Date

Submit this verification to:

PLCB-Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661