

Mailing Date: JAN 03 2011

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1268
LIQUOR CONTROL ENFORCEMENT	:	
	:	
	:	
v.	:	Incident No. W01-388955
	:	
	:	
KENRICH ATHLETIC CLUB	:	
121 S. 19 TH ST.	:	LID - 1117
PHILADELPHIA PA 19103-4905	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1927	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

DONALD M. MOSER, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

Kenrich Athletic Club Citation

No. 09-1268

This proceeding arises out of a citation that was issued on June 9, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kenrich Athletic Club, License Number C-1927 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, March 10, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

Mr. Moser requested a continuance based on the fact that Mr. Twardy, the club steward, was unavailable. That continuance was denied in that this matter had been continued at a number of prior listings. Mr. Moser was permitted an opportunity to review the transcript of the March 10, 2010 hearing and decide whether he would need to present additional witnesses on another date. Mr. Moser never requested that the matter be rescheduled until June 2, 2010 to determine if additional witnesses would be presented. The matter was inadvertently rescheduled for July 21, 2010, despite the fact that no notice had been given to the Court that any witnesses would be presented. Mr. Moser indicated he would not appear on that date. The Licensee, Mr. Twardy, chose to appear without counsel.

Mr. Twardy requested to re-cross examine a witness. The Court ruled that his attorney cross examined the witness on March 10, 2010 and was given an opportunity up to June 2, 2010 to advise the Court if he wished to cross examine the witness further or to bring any other witnesses. In that he did not do so, Mr. Twardy's request was denied, but Mr. Twardy was provided an opportunity to present additional testimony or witnesses. He presented one witness on July 21, 2010.

The citation contains three counts.

The first count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), in that on February 11 and March 26, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The second count charges Licensee with violation of Sections 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), in that on February 11, 2009, Licensee, by its servants, agents or employes, sold, furnished or gave liquor for consumption off premises.

The third count charges Licensee with violation of Sections 104(a) and 401 of the Liquor Code, 47 P.S. §§1-104(a) and 4-401 and Section 13.102 of the Liquor Control Board Regulations 40 Pa. Code §13.102, in that on February 11, 2009, Licensee, by its servants, agents or employes, furnished more than one free drink per patron.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises based upon a complaint which alleged that dollar drinks were being provided on Wednesdays. The officer made her first visit to the premises on February 11, 2009 at approximately 11:10 p.m. She entered the premises and walked passed a bouncer to a cashier. She paid twenty dollars to enter the premises. She was told that the twenty dollars came with twenty tickets. She was told that she could get a drink for each of the twenty tickets (N.T. 6-7).

2. The officer is not a member of the licensed club (N.T. 7).

3. The officer paid the twenty dollars and received twenty drink tickets. The officer went to the second floor bar and ordered a vodka and cranberry. She gave the bartender a ticket but paid no additional money for the drink (N.T. 8).

4. The officer placed the drink on the bar and again approached the bartender and ordered a second vodka and cranberry at approximately 11:17 p.m. She gave the bartender a ticket for the drink. She gave him no additional money (N.T. 8-9).

5. The officer then placed the drink on a different table and stood at the bar and waited to order another drink. She was able to order another drink at approximately 11:24 p.m. At that time, she ordered a third vodka and cranberry. The bartender indicated that pink vodka was free with a Miller Lite beer. She was given a twelve ounce Miller Lite beer along with a shot of vodka. She did not turn in a ticket nor did she pay for that drink (N.T. 10-11).

6. The officer then went downstairs and ordered a rum and coke from the bartender at approximately 11:30 p.m. She gave him a ticket but no additional money for the drink (N.T. 11).

7. The officer went upstairs and ordered a pink vodka and a Miller Lite beer at 11:35 p.m. and presented one ticket but no additional monies for the drinks (N.T. 12-13).

8. The officer then went downstairs and ordered a rum and coke. The rum and coke was served to her in a clear plastic glass. She then walked passed the door person and exited the premises at 11:40 p.m. with the rum and coke in her hand (N.T. 13-14).

9. She departed the premises at 11:45 p.m. and consumed the alcoholic beverage (N.T. 15).

10. During the time the officer was at the club, she was not questioned as to a membership (N.T. 15).

11. The officer made another visit to the premises on March 25, 2009 at approximately 11:50 p.m. Upon entering, she was requested to pay twenty dollars. She questioned him as to what the twenty dollars was for. She was told that she could stay downstairs with the band for free or she could pay twenty dollars and receive drink tickets which were equivalent to a dollar per drink. She indicated that she would stay downstairs with the band (N.T. 15-16).

12. The officer approached the bar and ordered a rum and coke at approximately 12:30 a.m. during the early morning hours of March 26, 2009. She paid the bartender five dollars for the vodka and cranberry (N.T. 16-18).

13. At 1:00 a.m. on March 26, 2009, she ordered another vodka and cranberry for which she paid five dollars. She was never requested to produce identification or membership card. She was never asked if she was a member of the club (N.T. 18-19).

14. On April 1, 2009, the officer made another visit to the premises. The premises was closed and she did not enter it at that time (N.T. 19-20).

15. On April 4, 2009, the officer visited the premises but did not find anything that led to a violation (N.T. 20-22).

16. Christopher Twardy testified that persons were not permitted to leave the premises with alcohol and that there are bouncers at the front door to insure that that does not happen (N.T. 20-21, July 21, 2010).

17. Mr. Twardy indicated that a base price was paid for a fixed amount of tickets and that there is one drink per ticket (N.T. 22, July 21, 2010).

18. Mr. Twardy indicated that he did have vodka promotions on the premises (N.T. 2223, July 21, 2010).

19. Mr. Twardy indicated that he had no personal knowledge of the officer exiting the premises with the drink (N.T. 24, July 21, 2010).

CONCLUSIONS OF LAW:

Count No. 1 - On February 11 and March 26, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1).

Count No. 2 - On February 11, 2009, Licensee, by its servants, agents or employes, sold, furnished or gave liquor for consumption off premises, in violation of Sections 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1).

Count No. 3 - On February 11, 2009, Licensee, by its servants, agents or employes, furnished more than one free drink per patron, in violation of Sections 104(a) and 401 of the Liquor Code, 47 P.S. §§1-104(a) and 4-401 and Section 13.102 of the Liquor Control Board Regulations 40 Pa. Code §13.102 and Section 13.53 of the Liquor Control Board Regulations, 40 Pa. Code Section 13.53.

PRIOR RECORD:

Licensee has been licensed since August 17, 1960, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 07-1376. \$1,500.00 fine.

1. Sales to nonmembers.
February 17, March 7 and April 1, 2007.
2. Sales between 3:00 a.m. and 7:00 a.m. April 1, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. April 1, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
April 1, 2007.

Citation No. 07-3003. \$3,500.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
September 8, 2007.
2. Sales to nonmembers.
May 18 and September 8, 2007.

Kenrich Athletic Club Citation

No. 09-1268

3. Sales between 3:00 a.m. and 7:00 a.m.
September 8, 2007.
4. Failed to require patrons to vacate the premises not later than
one-half hour after the required time. September 8, 2007.
5. Permitted patrons to possess or remove alcoholic beverages
after 3:30 a.m. September 8, 2007.
6. Sold an unlimited or indefinite amount of alcoholic
beverages for a fixed price. May 18, 2007.
7. Improper admission of members.
May 18, 2007.

Citation No. 08-0930. \$1,000.00 fine and ten days suspension.

1. Used loudspeakers or devices whereby music could be
heard outside. March 8, 2008.
2. Interfered with an Enforcement officer in the
performance of his duties.
March 8, 2008.

Citation No. 08-2299. \$3,000.00 fine and one day suspension continuing
thereafter until the fine is paid.

1. Used loudspeakers or devices whereby
music could be heard outside.
April 6, 2008.
2. Sales between 3:00 and 7:00 a.m. April
6, 2008
3. Improper admission of members. April
6, 2008.

Citation No. 08-3062. \$1,750.00 fine and one day suspension continuing
thereafter until the fine is paid.

1. Sales to nonmembers.
November 8 and 22, 2008.
2. Used loudspeakers or devices whereby music could be heard
outside.
November 8 and 22, 2008.

DISCUSSION:

The officer testified credibly that she went to the premises on a number of occasions and that the Licensee offered drinks to nonmembers and that she was able to remove her drink from the premises.

Kenrich Athletic Club Citation
No. 09-1268

Licensee indicated that there was not more than one free drink given. Rather, the tickets represented the cost of one dollar per drink. The officer also indicated that free vodka was provided to her, twice, when she ordered Miller beer. The drink special appears to not be in compliance with the language of the regulation, although it violates the spirit of the law in allowing massive consumption of alcoholic beverages at a very low price. The practice would in fact encourage excessive drinking. The other problem is that this special was being offered to the general public and not to just club members and their guests. With regard to the giving away of vodka, the law permits only one free drink per offering. See 40 Pa. Code §13.53. Per offering does not allow for a free drink every time a Miller beer or other drink is purchased. That practice violates discount pricing regulations.

A review of the prior record indicates a number of violations with regard to nonmembers. Under the circumstances, moderate monetary penalties and a period of suspension 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$700.00 and one day suspension.
Count No. 2 - \$100.00 and one day suspension. Count
No. 3 - \$200.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kenrich Athletic Club, License Number C-1927, pay a fine of One Thousand Dollars (\$1,000.00) 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 Club Liquor License of Kenrich Athletic Club, License Number C-1927, be suspended for a period of two (2) days. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

Kenrich Athletic Club Citation
No. 09-1268

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

Dated this 17TH day of DECEMBER, 2010.



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.

mm

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

Citation No. 09-1268
Kenrich Athletic Club