

Mailing Date: NOV 30 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1503
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-393669
v.	:	
	:	LID - 59764
SMBW INC	:	
5642-44 BOYER ST	:	
PHILADELPHIA PA 19138-1733	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-1162	:	

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 June 30, 2009. There are three counts in the citation.

The first count alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on May 2, 2009, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2009.

The second count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on May 2, 2009, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items, eating utensils or dishes and glasses.

The third count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on May 23 and 24, 2009, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

At the hearing scheduled for October 15, 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 April 30 through May 24, 2009, and sent written notice of the results of its investigation on June 5, 2009 (N.T. 13-14, Exhibit B-1).
2. Copies of this citation were mailed to Licensee (N.T. 14-15, Exhibit 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 August 28, 2009.
4. A liquor enforcement officer inspected the licensed premises on May 2, 2009, and found that its health permit had expired two days previously. The premises contained no food, eating utensils, or dishes (N.T. 5-7).
5. At 11:45 p.m. on May 23, 2009, a liquor enforcement officer arrived in the area of the licensed premises and heard loud music emanating from it at a distance of 100 feet. He entered the premises and found that the music was coming from loudspeakers inside, attached to a juke box. When the officer left at 12:20 a.m., May 24, 2009, he again heard music from the loudspeakers outside of the premises (N.T. 8-12).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since April 2, 2008, 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 this type. Penalties are assessed as follows:

- Count 1 – a fine of \$100.00 plus verification of compliance.
- Count 2 – a fine of \$400.00.
- Count 3 – a fine of \$300.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, SMBW, Inc., License No. R-AP-1162, shall pay a fine of eight hundred dollars (\$800.00) 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 a true copy of a current and valid Food Preparing/Serving License from the City of Philadelphia within 20 days of the mailing date of this order. If this is not done, the penalty in this case will be modified to include an indefinite suspension of license.

Dated this 19TH day of November, 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

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