

Mailing Date: MAR 01 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1757
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-392134
	:	
REPUBLICAN LEAGUE OF W. PHILA.	:	
1213 N. 52 ND ST.	:	LID - 1034
PHILADELPHIA PA 19131-4411	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1667	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 28, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Republican League of W. Phila., License Number C-1667 (hereinafter "Licensee").

An administrative hearing was held on Wednesday, December 8, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains five counts.

The first count charges Licensee with violation of Sections 406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16), in that on June 14, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on June 14, 2009, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on June 14, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m.

The fourth count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), in that on June 14, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The fifth count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on June 14, 2009, Licensee, by its servants, agents or employes, permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m., when they did not possess an Extended Hours Food Permit.

COUNT NOS. 1, 2, 3, 4 AND 5

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises between March and June of 2009. Towards the end of the investigation, specifically June 14, 2009, he visited the licensed premises arriving at 2:25 a.m. along with a second officer from the Bureau (N.T. 5-6).

2. When the officer arrived at the licensed premises, he entered through a side door where there was a doorman who requested that he pay a five dollar cover charge. The officer paid the five dollar cover charge for himself and the other officer (N.T. 6).

3. In addition to paying the five dollars, the officer was requested to sign a book. He signed his name and the other officer's name in the book. Neither officer was challenged with regard to membership (N.T. 7).

4. Prior to June 14, 2009 and thereafter, neither he nor the other officer had ever been a member of the licensed club (N.T. 7).

5. Once the cover charge was paid, the officers entered into the bar area. The officers sat down and ordered a drink from a female bartender. There were approximately forty patrons on the premises and two bartenders. The officer ordered two bottles of Budweiser beer. Neither officer was challenged as to membership (N.T. 8).

6. The officer paid \$8.00 for the beer at approximately 2:30 a.m. He made a second purchase of two Budweiser beers, again paying \$8.00 at 3:15 a.m. At that time, there were approximately forty-five patrons on the premises. The officer remained on the premises until 3:45 a.m. (N.T. 9).

7. There were patrons still entering and leaving the premises at 3:15 a.m., and the doorman was still present collecting money at the door (N.T. 10).

8. Between 3:15 a.m. 3:45 a.m., the officer observed other patrons ordering and being served alcoholic beverages. The officer saw approximately five to ten sales during that period of time (N.T. 11).

9. At 3:45 a.m., there were still approximately forty-five patrons on the premises. Some of those patrons had alcoholic beverages in their possession (N.T. 12).

10. There was no food service during the time of the officer's visit (N.T. 12).

11. The Court takes administrative notice of the records of the Pennsylvania Liquor Control Board, which indicate that the Licensee had no extended hours permit.

CONCLUSIONS OF LAW:

Count No. 1 - On June 14, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16).

Count No. 2 - On June 14, 2009, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a).

Count No. 3 - On June 14, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a).

Count No. 4 - On June 14, 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. 5 - On June 14, 2009, Licensee, by its servants, agents or employes, permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m., when they did not possess an Extended Hours Food Permit, in violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a).

PRIOR RECORD:

Licensee has been licensed since February 17, 1934, 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. 88-0892. \$1,500.00 fine and seven days suspension.

1. Sales to a minor.
2. Sales between 3:00 a.m. and 7:00 a.m. (Withdrawn by Bureau)
3. Sales to nonmembers.

Citation No. 88-1333. \$5,000.00 fine and ten days suspension.

1. Sales to nonmembers.
2. Improper admission of members.
3. Sales between 3:00 a.m. and 7:00 a.m.

Citation No. 88-2626. \$1,000.00 fine and fifteen days suspension. Fine not paid and license suspended for a period of ten days and thereafter until fine was paid.

1. Sales to nonmembers.

Citation No. 91-0493. \$2,000.00 fine and fifteen days suspension.

1. Sales between 3:00 a.m. and 7:00 a.m.
November 22 and 23, 1990.

Citation No. 92-1490. \$2,000.00 fine and 30 days suspension.

1. Sales between 3:00 a.m. and 7:00 a.m.
April 29 and May 6, 1992.

Citation No. 93-1027. \$500.00 fine and five days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the premises, a Notice of Suspension.

March 31, April 5 and 17, 1993.

Citation No. 93-1144. \$2,500.00 fine and forty days suspension.

1. Improper admission of members.
May 2, 1993.
2. Sales to nonmembers.
May 2, 1993.
3. Sales between 3:00 a.m. and 7:00 a.m.
May 2, 1993.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 2, 1993.
5. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 3:30 a.m.
May 2, 1993.

Citation No. 94-2951. \$3,000.00 fine and thirty days suspension.

1. Sales to nonmembers.
October 22 and December 3, 1994.
2. Sales between 3:00 a.m. and 7:00 a.m.
December 3, 1994.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
December 3, 1994.
4. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.
December 3, 1994.

Citation No. 96-1738. Five days suspension.

1. Sales to nonmembers.
June 23, 1996.

Citation No. 97-1718. Seven days suspension.

1. Improper admission of members.
May 11, 1997.
2. Sales to nonmembers.
May 11, 1997.

Citation No. 99-1856. \$7,000.00 fine, four days suspension and certification restitution made.

1. Failed to maintain a copy of the constitution and by-laws on the licensed premises.
October 8, 1999.
2. Failed to maintain a photostatic of certified copy of the charter on the licensed premises.
October 8, 1999.
3. Failed to keep records on the licensed premises.
October 8, 1999.
4. Possessed or operated gambling devices, paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
October 8, 1999.
5. Unlawfully possessed liquor obtained from a source other than a Pennsylvania state store.
October 8, 1999.

Citation No. 00-1760. Revocation of license. Licensee's appeal to Board dismissed. Licensee's appeal to Common Pleas Court modified penalty to a \$3,000.00 fine and thirty days suspension.

1. Failed to maintain a copy of the constitution and by-laws on the licensed premises.
October 9, 1999 through September 13, 2000.
2. Unexplained shortage in reported cash income.
January 1, 1999 through February 29, 2000.
3. Failed to maintain a photostatic of certified copy of the charter on the licensed premises.
October 9, 1999 through September 13, 2000.
4. Organization not operated for the mutual benefit of the entire membership.
January 1, 1999 through March 3, 2000.
5. The primary interest and activity of the licensed organization is the sale of alcoholic beverages.
January 1, 1999 through March 3, 2000.
6. Operated a club not in conformity with the Liquor Code definition of "club".
January 1, 1999 through March 3, 2000.
7. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.
March 3, 2000.
8. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
January 1, 1999 through March 3, 2000.

9. Failed to keep records on the licensed premises.
January 1, 1999 through March 3, 2000.
10. Failed to conduct business through officers regularly elected.
January 1, 1999 through March 3, 2000.
11. Failed to fulfill charter purposes.
January 1, 1999 through March 3, 2000.

Citation No. 05-1429. \$2,500.00 fine and 30 days suspension.

1. Sales between 3:00 a.m. and 7:00 a.m.
May 7, 21 and June 11, 2005.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 7, 21 and June 11, 2005.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.
May 7, 21 and June 11, 2005.
4. Permitted patrons to enter the premises between 3:30 a.m. and 7:00 a.m. when they did not possess and Extended Hours Food Permit.
May 7, 21 and June 11, 2005.
5. Sales to nonmembers.
May 7, 21 and June 11, 2005.

DISCUSSION:

On June 14, 2009, the Licensee served alcoholic beverages between 3:00 and 7:00 a.m. and the Licensee failed to have patrons vacate the premises one half hour after the required time for the cessation of service of alcoholic beverages. The officer noted that many patrons were still in possession of alcoholic beverages after 3:30 a.m. The officers entered the premises, and purchased alcoholic beverages, but were never challenged as to membership. In order for patrons to remain on the licensed premises after hours, the premises must apply for and receive an Extended Hours Food Permit. No such permit was issued to this establishment by the Liquor Control Board.

Under the circumstances, the evidence is sufficient to sustain the charges. In reviewing the Licensee's prior history, they have an extensive record of violation, which includes sales to nonmembers and after hours sales. The last violation was, however, in 2005. Therefore, 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 Count Nos. 2, 3, 4 and 5 of this case.

Republican League of W. Phila.
Citation No. 09-1757

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. 1 of this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,500.00 and five days suspension.
Count No. 2 - \$500.00 and one day suspension.
Count Nos. 3 and 4 (as merged) - \$500.00 and one day suspension.
Count No. 4 - \$500.00 and one day suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Republican League of West Philadelphia, License Number C-1667, pay a fine of Three Thousand Dollars (\$3,000.00) 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 Republican League of West Philadelphia, License Number C-1667, be suspended for a period of eight (8) days **BEGINNING** at 7:00 a.m. on Monday, May 16, 2011 and **ENDING** at 7:00 a.m. on Tuesday, May 24, 2011.

Licensee is directed on Monday, May 16, 2011 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

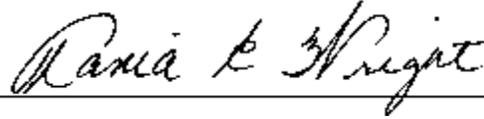
The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Tuesday, May 24, 2011 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Republican League of W. Phila.
Citation No. 09-1757

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

Dated this 10TH day of February, 2011.



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 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, along with any required documentation, to:

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

Citation No. 09-1757
Republican League of W. Phila.