

Mailing Date: JAN 06 2011

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1890
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-397335
	:	
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:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

DONALD M. MOSER, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

Kenrich Athletic Club Citation

No. 09-1890

This proceeding arises out of a citation that was issued on August 18, 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.

This hearing proceeded with the objection of Counsel who indicated that the club steward was ill and unable to be present. In that this was the fourth listing of the case, the Court denied the request for a continuance. In that this is a club license, the Court advised Counsel that another officer could be present on behalf of the licensed club. There was no indication that the club steward was an essential fact witness. The Court, however, did extend Mr. Moser the courtesy of bifurcating the hearing if he believed he needed to present additional witnesses.

Mr. Moser was given fifteen days after receipt of this transcript to advise the Court as to whether or not he would be requesting the Court to bifurcate the matter. The transcript was received by this Court on March 24, 2010. By letter, Mr. Moser acknowledged receipt of the transcript and requested additional time until June 2, 2010, in order to make that determination. No further motion or request was forthcoming from Mr. Moser. Mr. Moser did not advise the Court that he would be presenting any further witnesses. Inadvertently, this matter was rescheduled.

Mr. Moser, who represented the Licensee, advised the Court that he would not be present at the rescheduled hearings. Mr. Twardy, the club steward, did appear, however, he was ill and not able to proceed with the matter. Mr. Twardy indicated that Mr. Moser still represented him. Under the circumstances, this matter will be decided based upon the notes of testimony on March 10, 2010.

The citation charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), in that on July 19, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises in July of 2009 relative to complaints for sales to nonmembers (N.T. 4-5).

2. The officer visited the licensed premises on July 19, 2009 at approximately 2:00 a.m. When the officer arrived, he approached the premises and entered through the front door. He was familiar with the premises and noted that the front door has an awning with the club emblem on it (N.T. 6).

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3. There were two bouncers at the front door. They were dressed in dark blue or black clothing with the "One" emblem on their shirt. One of the employees asked for identification; the other performed a pat down search (N.T. 6-7).
4. When the officer entered the premises, the bouncers requested a driver's license but did not request any membership card (N.T. 7).
5. As the officer went down the hall, he saw a woman seated at the desk and paid five dollars to enter the premises (N.T. 7).
6. The officer was not a member then nor currently is a member of the club (N.T. 8).
7. The officer went to the first floor bar and ordered a twelve ounce Miller Lite beer for which he paid approximately five dollars (N.T. 8).
8. The officer was not challenged as to membership (N.T. 8-9).
9. The officer subsequently walked upstairs to see how many people were there and then returned to the first floor. He purchased a second Miller Lite beer from a first floor bartender, again paying five dollars (N.T. 9).
10. The officer departed the premises at 3:00 a.m. The officer made no further visits to the premises (N.T. 10-11).

CONCLUSIONS OF LAW:

On July 19, 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).

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.

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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.
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.

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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 he entered the premises without challenge to membership and purchased alcoholic beverages at the licensed premises on July 19, 2009. The Licensee has a number of prior violations for sales to nonmembers. Under the circumstances, a \$300.00 penalty and one day 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.

Accordingly, we issue the following

ORDER:

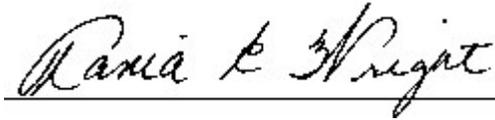
THEREFORE, it is hereby Ordered that Licensee, Kenrich Athletic Club, License Number C-1927, pay a fine of Three Hundred Dollars (\$300.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this 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 one (1) day. 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.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

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

Dated this 13TH 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.

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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

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Kenrich Athletic Club