

Mailing Date: FEB 09 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2084
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-392237
v.	:	
	:	LID - 59488
BAR BLUE II LLC	:	
142 E MARKET ST	:	
WEST CHESTER PA 19382-3153	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. R-AP-SS-16033	:	

JUDGE SHENKLE
BLCE COUNSEL: James E. Dailey, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 9, 2009. The citation alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §§4-404, on May 29, August 2 and 6, 2009, by failing to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the license.

At the hearing scheduled for December 17, 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 25 through August 6, 2009, and sent written notice of the results of its investigation to the licensed premises by certified mail on August 21, 2009 (N.T. 19-20, Exhibit B-1).
2. A copy of this citation was mailed to the licensed establishment by certified mail on September 9, 2009 (N.T. 19-20, Exhibit B-2).
3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on November 2, 2009
4. On May 29, 2009, liquor enforcement officers visited the licensed premises at 12:40 a.m. They parked on Market Street, east of the premises, and walked to the entrance. They did not observe any employee of Licensee monitoring the outside of the premises (N.T. 5-6).

5. The officers entered the premises through the storefront entrance. They were not asked for identification, and they were not required to pay a cover charge. They sat at the bar and ordered alcoholic beverages. They stayed for about an hour. They saw two security guards inside the premises during this time. When the officers left the premises they looked again for a security person outside, and did not see one (N.T. 7-9).

6. On August 2, 2009, liquor enforcement officers visited the licensed premises at 12:35 a.m. They parked on Market Street, east of the premises, and walked to the entrance. They did not observe any employee of Licensee monitoring the outside of the premises (N.T. 10).

7. The officers entered the premises. They were not asked for identification, and they were not required to pay a cover charge. They saw at least four security guards inside the premises during this visit. When the officers left the premises they looked again for a security person outside, and did not see one (N.T. 11-12).

8. On August 6, 2009, liquor enforcement officers visited the licensed premises at 9:45 p.m. They parked on Market Street, east of the premises, and walked to the entrance. They did not observe any employee of Licensee monitoring the outside of the premises (N.T. 13-14).

9. When the officers entered the premises they were required to pay a cover charge and produce identification, which was scanned in a transaction scan device. There were at least four security guards on duty inside the premises, although there were none outside (N.T. 14-15).

10. A Conditional Licensing Agreement between the Board and Licensee dated August 8, 2008, provides among other things that the Licensee ("Blue") shall:

(e) Blue shall require all patrons to pay a cover charge in order to enter the premises during the hours of 9:00 p.m. until closing on all evenings, if alcoholic beverages are being served at the premises;

....

(j) During all hours of operation, Blue shall employ at least one (1) individual whose sole duty shall be monitoring the exterior of the premises and the area within fifty (50) feet of the premises' storefront, for violations of law, disturbances outside the premises and/or violations of this Agreement. Said individual shall immediately notify the Board-approved manager or the manager on duty of any such violations or disturbances;

....

(n) Blue shall utilize transaction scan devices, as the term is defined in the Liquor Code, to scan the identification of all patrons entering the premises;

....

(p) Blue shall ensure the presence of at least four (4) employees, charged solely with providing security at the premises from 8:00 p.m. until closing, on all evenings that Blue is operating. Said employees shall be dressed so as to easily identify their security function and authority;

(N.T. 15-18, Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since August 8, 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.

The penalty in this case reflects the fact that the Conditional Licensing Agreement requires many other things of Licensee, about which no complaint of noncompliance was made. In most ways Licensee complied with the agreement, although not perfectly.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bar Blue II, LLC, License No. R-AP-SS-16033, shall pay a fine of one hundred dollars (\$100.00) 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.

Dated this 26TH day of January, 2010.


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