

Mailing Date: AUG 04 2010

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

|                              |   |                         |
|------------------------------|---|-------------------------|
| PENNSYLVANIA STATE           | : |                         |
| POLICE, BUREAU OF            | : | Citation No. 09-2120    |
| LIQUOR CONTROL ENFORCEMENT   | : |                         |
|                              | : |                         |
| v.                           | : | Incident No. W01-398948 |
|                              | : |                         |
| MIR 400 INC.                 | : |                         |
| 400 W. CUMBERLAND ST.        | : | LID - 60962             |
| PHILADELPHIA PA 19133-3011   | : |                         |
|                              | : |                         |
|                              | : |                         |
| PHILADELPHIA COUNTY          | : |                         |
| LICENSE NO. R-AP-SS-OPS-3648 | : |                         |

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 15, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MIR 400, Inc., License Number R-AP-SS-OPS-3648 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, January 13, 2010, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41, in that on August 12, 2009, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2009.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on August 12, 2009 and ended on August 18, 2009. A notice of violation letter dated August 26, 2009 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on August 27, 2009. A citation dated September 15, 2009 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on September 17, 2009. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received at the licensed premises (N. T. 9-12 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement visited the licensed premises on August 12, 2009. The officer arrived at 3:30 p.m. and spoke with a Mario Alavera, who stated that he was the employee in charge. The officer conducted a routine inspection of the premises noting that the premises was open and operating (N.T. 6-7).

3. Maria Rodriguez, who indicated that she was the corporate president, stated that she was working on obtaining a current Food Preparation License. He also questioned her about beer and liquor invoices being maintained on the premises. She had a total of six invoices with the oldest date of April of 2009. One liquor invoice was dated September 27, 2008. A warning was issued for her having no records on the premises (N.T. 7-8).

4. The officers did not find a valid health permit on the premises. Certification from the Department of Licenses and Inspections indicated that there was no valid health permit issued to this establishment. The records indicated that they had not applied for that permit (N.T. 8-9 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On August 12, 2009, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2009, in violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41.

PRIOR RECORD:

Licensee has been licensed since December 29, 2008, and has no record of prior violations.

DISCUSSION:

The Licensee operated the licensed establishment without a valid health permit, in that the health permit had expired on April 30, 2009 and was not valid on August 12, 2009. Under the circumstances, a monetary penalty shall be imposed and Licensee will be required to send a copy of a current and valid health permit.

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

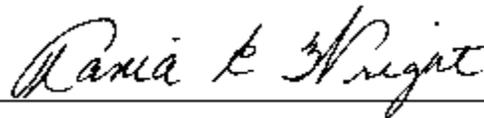
ORDER:

THEREFORE, it is hereby Ordered that Licensee, MIR 400, Inc., License Number R-AP-SS-OPS-3648, 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 Licensee, MIR 400, Inc., License Number R-AP-SS-OPS-3648, submit a copy of a current and valid health permit within twenty (20) days from the mailing date of this Order. If said documentation is not submitted within twenty (20) days from the mailing date of this Order, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

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

Dated this 12<sup>TH</sup> day of JULY, 2010.



Tania E. Wright, J.

MIR 400, Inc.  
Citation No. 09-2120

**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

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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. 09-2120  
MIR 400, Inc.