

Mailing Date: APR 08 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2146
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-393378
v.	:	
	:	LID - 9244
29-CLEMENTINE BAR INC	:	
3126-28 N 29 th ST	:	
PHILADELPHIA PA 19132	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-155	:	

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 September 15, 2009. There are three counts in the citation.

The first count alleges that Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on April 18, 2009, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items.

The second count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 18, 2009, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to three female minors, eighteen to twenty years of age.

The third 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 April 18, 2009, by operating the licensed premises without a valid health permit or license.

At the hearing scheduled for February 17, 2010, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the matter proceeded *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period April 18 through August 28, 2009, and sent written notice of the results of its investigation to the licensed premises by certified mail on August 28, 2009 (N.T. 10-11, Exhibit B-1).
2. A copy of this citation was mailed to the licensed establishment by certified mail on September 15, 2009 (N.T. 11-12, 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 December 31, 2009.
4. A liquor enforcement officer inspected the licensed premises on April 18, 2009. There was no health permit on display, and there was no food in the premises (N.T. 5-6).
5. There was no valid preparing/serving food license in force for this establishment on April 18, 2009. The health permit had been revoked in 2007 for nonpayment of the license fee (Exhibit B-3).
6. This restaurant liquor license expired on October 31, 2009, and it has not been renewed.

CONCLUSIONS OF LAW:

Licensee violated §102 of the Liquor Code, 47 P.S. §1-102, on April 18, 2009, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items.

The Bureau was unable to prove that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 18, 2009, because of the nonappearance of essential witnesses.

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 April 18, 2009, by operating the licensed premises without a valid health permit.

PRIOR RECORD:

Licensee has been licensed since May 18, 1978, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 91-1800. \$150.00 fine.

1. Operated without a valid health permit or license.

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 the type found in this case. Penalties are assessed as follows:

- Count No. 1 – a fine of \$300.00.
- Count No. 2 – DISMISSED.
- Count No. 3 – a fine of \$300.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 29-Clementine Bar, Inc., License No. R-AP-155, shall pay a fine of six hundred dollars (\$600.00) 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 19TH day of MARCH, 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