

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. 09-2216
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-395841
	:	
PREDEX INC.	:	
5424 MASTER ST.	:	LID - 60476
PHILADELPHIA PA 19131-4204	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-11204	:	

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 22, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PreDEX, Inc., License Number R-AP-SS-11204 (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 contains three counts.

The first count 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 1, 2009, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2009.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding August 1, 2009.

The third count charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102, in that on August 1, 2009, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient food items.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on June 15, 2009 and ended on August 18, 2009. A notice of violation letter dated September 3, 2009 was sent to the licensed premises by certified mail, return receipt requested. The mailing was returned unclaimed. The Bureau sent a citation dated September 22, 2009 to the licensed premises by certified mail, return receipt requested. The certified mailing was again returned unclaimed. 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 returned unclaimed (Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises visiting the premises on August 1, 2009 at approximately 1:30 a.m. (N.T. 5-6).

3. The officer visited the premises along with another Bureau officer and representatives from the Philadelphia Police Department and the Philadelphia Department of Licenses and Inspections (N.T. 6).

4. The detail entered the premises and conducted a routine inspection. While inside the premises, they noted that the premises had no valid health permit nor did they have any food or records on the premises. There were no liquor or beer invoices on the premises (N.T. 7).

5. The premises was open and operating (N.T. 7).

6. The employees on the premises claimed to have had food earlier in the evening but had run out. However, the officers saw no sign of food or food preparations, but they did have dishes on the premises. There was no menu available (N.T. 8).

7. The officer inquired with regard to a health permit on the premises. He indicated that the health permit had not been renewed and they had not applied for a health permit which expired on April 30, 2009. Certified records from the city of Philadelphia Department of Licenses and Inspections indicate that the establishment has never applied for a Preparing and Serving Food License (N.T. 9 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On August 1, 2009, Licensee, by its servants, agents or employees, 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.

Count No. 2 - Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding August 1, 2009, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

Count No. 3 - On August 1, 2009, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient food items, in violation of Section 102 of the Liquor Code, 47 P.S. Section 1-102.

PRIOR RECORD:

Licensee has been licensed since August 15, 2008, and has no record of prior violations.

DISCUSSION:

No one appeared at the hearing to offer an explanation or defense. Under the circumstances, a monetary penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §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.

Predex, Inc.
Citation No. 09-2216

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$250.00.
Count No. 2 - \$250.00.
Count No. 3 - \$250.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Predex, Inc., License Number R-AP-SS-11204, pay a fine of Seven Hundred Fifty Dollars (\$750.00) 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, Predex, Inc., License Number R-AP-SS-11204, submit a Verification indicating that the premises is a bona fide restaurant in that they now maintain sufficient food items, and 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 14TH day of JULY, 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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PreDEX, Inc.
Citation No. 09-2216

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. 09-2216
PreDEX, Inc.

VERIFICATION

I/We, Predex, Inc., License No. R-AP-SS-11204, do hereby affirm that food is served on the premises (attach menu or list of items offered for sale) as of _____ (date).

Subject to the penalties contained in 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities, the undersigned officer(s) verifies that I/We are signing and executing this document as the authorized act and deed of the licensee. I/We hereby certify that the foregoing is true and correct.

Corporate Officer's Signature

Corporate Officer's Signature

Date

Date

NOTE: Mail Verification and accompanying documents to:

PLCB – OFFICE OF ADMINISTRATIVE LAW JUDGE
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661