

Mailing Date: JAN 07 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2347
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-399020
	:	
HIGHLAND BEVERAGE INC.	:	
7718 WEST CHESTER PIKE	:	LID - 48322
UPPER DARBY TWP.	:	
UPPER DARBY PA 19082-1913	:	
	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. D-SS-3205	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 14, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Highland Beverage, Inc., License Number D-SS-3205 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 13, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 468(a) of the Liquor Code, 47 P.S. §4-468(a), in that on August 5, 2009, Licensee, by its servants, agents or employees, failed to maintain an office on the licensed premises separate and apart from the remainder of the licensed premises for the purpose of keeping records required by the Board.

FINDINGS OF FACT:

1. Two officers from the Bureau of Enforcement entered the distributorship and noted that there were cases of beer in the front stacked up for sale and prices and price signs (N.T. 5-7).

2. The officers noted portions of the premises that were separated by plexiglass. Behind the Plexiglass, he noted there was a cash register, chips and cigars, similar to that of a convenience store (N.T. 7).

3. The officers identified himself to the Mr. Lam and informed him that they would be conducting a routine inspection of the premises. The officers asked for purchase invoices for 2009 (N.T. 8).

4. The officer asked Mr. Lam to take him to the office and show him the records. Mr. Lam reached under the register where there was a drawer and pulled out a stack of scattered papers and receipts (N.T. 8).

5. The register was found behind the plexiglass (N.T. 8).

6. The officer asked Mr. Lam if he maintained a separate access from the premises. He indicated that what he believed to be the area marked for storage there was a separate room containing a couch and clothing and scattered belongings, but there was no office in that area (N.T. 11-12).

7. The officer returned to the premises on another visit and obtained the required invoices and receipts (N.T. 12).

8. The officer returned to the premises on September 9, 2009 at 1:00 p.m. In the area behind the plexiglass, the Licensee had a separate office area. The desk was set up in the area where the couch and the scattered belongings had been away from the plexiglass in a separate area (N.T. 13-14).

9. On the officer's initial visit to the premises, he and the other officer explained to the Licensee how records and invoices were to be properly kept. When the officers returned, the Licensee showed them that he was making an effort to keep the records and that he now has an office where he keeps them separate from where he does the daily business (N.T. 15).

10. The cash register was sitting on a counter (N.T. 20-21).

11. Aloysius Lineman testified he was formally employed by the Pennsylvania Liquor Control Board for approximately thirty years. He was an undercover investigator for licensing and was later promoted in 1995 to the manager of the Eastern Regional Office (N.T. 24).

12. When the Licensee received this citation, Mr. Lineman went to the premises and measured the various areas in accordance with the diagram from the records of the Liquor Control Board. He concluded that the area was the same as those on the diagram (N.T. 24-26 and Exhibit B-3).

13. Mr. Lineman took photographs of the area which showed an office (N.T. 27).

14. Mr. Lineman indicated that he went to the premises the day after they received the citation. The citation was issued on October 14, 2009 which was subsequent to the officers second visit of September 9, 2009 where he verified that the premises was now in compliance (N.T. 14 and 24).

15. Mr. Lineman indicated that according to his experience, the Liquor Control Board licensed the office and sales area in the same partitioned area. He indicates that the space only need to be separated from the display area. In some cases it is only separated by a four foot high partition (N.T. 28).

CONCLUSIONS OF LAW:

On August 5, 2009, Licensee, by its servants, agents or employes, failed to maintain an office on the licensed premises separate and apart from the remainder of the licensed premises for the purpose of keeping records required by the Board, in violation of Section 468(a) of the Liquor Code, 47 P.S. §4-468(a).

PRIOR RECORD:

Licensee has been licensed since September 19, 2001, and has no record of prior violations.

DISCUSSION:

Licensee is charged with violation of Section 47 P.S. §4-468(a)(2). The relevant language is as follows:

[I]n the case of all transfers of distributor or importing distributor licenses, whether from a place within the same municipality to another place within the same municipality or from a place in a municipality to a place in any other municipality within the same county, and, in the case of an exchange of a distributor license for an importing distributor license or an importing distributor license for a distributor license, the premises to be affected by the transfer or exchange shall contain an office separate and apart from the remainder of the premises to be licensed for the purpose of keeping records, required by the board ...” (emphasis supplied).

The language was also a part of Act 14 of 1987, so the requirement was in force at the time Licensee acquired its license (September 19, 2001). Therefore, the Board was authorized to transfer this license only if the premises to which it was transferred was equipped with the separate office. From this the Bureau concludes that Licensee is required at all times subsequent to the transfer to maintain a separate office and to keep the records required by the Board in that office. See Opinion of the Office of Administrative Law Judge in *R.B. Adhuria, Inc.*, Citation No. 09-1980, by Judge David Shenkle.

Here, the Bureau of Enforcement alleges that the premises is not configured as it was when licensed and determined that the records that were pulled from behind the counter were not being maintained in a *separate* office, as is required. On the officers’ second visit to the premises, Licensee had fashioned an office in that area, and was maintaining records in the manner advised by the Bureau officer. Licensee’s witnesses stated when he visited on August 5, the configuration was the same as indicated in the diagram drawn by a licensing officer of the Board, and that the Licensee was in compliance and maintained an office in the designated area, even though Licensee was utilizing the area for sales.

The statute requires that the beer distributor maintain a separate office, apart from the remainder of the premises to be licensed, for the purpose of keeping records. The remainder of the premises is licensed for sales and/or storage. The Court can deduce from the statute that the area designated as a *separate* office can not be a part of the licensed display or storage areas, which are designated at the time of approval by the Board. The purpose of the separate office, as stated in the statute is to maintain records. Otherwise, the provision does not address specifics regarding the office. The Court concludes that the separate office can *not* contain supplies for sale, e.g., alcoholic beverages, or other products, whether or not they have been approved for sale on the premises by the Liquor Board. Those products are relegated to display and/or storage areas or in other designated areas. The Court does not find it appropriate to maintain lottery, chips, cigarettes, cigars or other convenience items in the area designated as a *separate* office. There is nothing further to indicate what furnishings or supplies (*other than those for sale*) can or cannot be housed in the office.

There are numerous items typically found in a business office; the appropriateness of the items largely depends on the nature of the business. Licensee is a beer distributor. Therefore, nothing contained in that office should interfere with its intended purpose, i.e., keeping records. A sofa would not necessarily be inappropriate; however, a bed and clothing would indicate that the area was being used as a living or sleeping area and not for the purpose of record storage. *No records in the office* would indicate that even if a separate office exists, it is not being utilized for the purpose intended. Excessive clutter, as shown in Exhibit L-2, might also indicate that the space is not fit for its intended purpose.

Licensee's witness testified on the date of his visit, the premises were set up as it was at the time of the approval by the PLCB. The officer indicated that he was unsure of the dimensions of each area, but did indicate that in the area where the Licensee removed the records was under the counter in a drawer in an area where the cash register, lottery and numerous other items for sale were located. Even if the officer was mistaken as to the length of the Plexiglas wall, there was still no indication to the officer that this premises had a separate office, regardless of its location relative to the original licensing documentation.

There was no allegation that Licensee has failed to maintain the records. The Bureau complains that the records were kept behind the service counter, and not in a *separate* office. The officer subsequently viewed all of the records and showed the Licensee how to properly maintain the records. Licensee's witness indicated that on the date of his visit, there was an office in the designated area. However, the Court finds that the Bureau officer testified credibly and that his description of the area itself did not constitute a separate office, regardless of whether or not the area was designated for the office. In addition, the Licensee admitted that he had no separate office. The Licensee subsequently complied by removing the sale items and/or furnishing one room or another so as to enable him to keep the appropriate records. The matter does not turn on the location of the cash register, but rather that the original area, housing the records, was being utilized to display and maintain products.

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

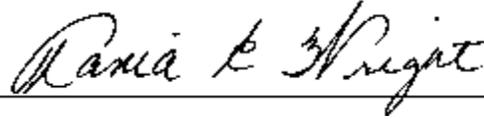
ORDER:

THEREFORE, it is hereby Ordered that Licensee, Highland Beverage, Inc., License Number D-SS-3205, pay a fine of Two Hundred Fifty Dollars (\$250.00) 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.

Highland Beverage, Inc.
Citation No. 09-2347

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

Dated this 16TH 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.

mm

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. 09-2347
Highland Beverage, Inc.