

Mailing Date: SEP 10 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2377
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-391688
v.	:	
	:	LID - 59245
SARA512 INC	:	
T/A UNIQUE PIZZA AND SUBS	:	
RESTAURANT & LOUNGE ¹	:	
512 OHIO RIVER BLVD	:	
AVALON	:	
PITTSBURGH PA 15202-2326	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. H-AP-SS-4732	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Michael Nickles, Esquire
LICENSEE COUNSEL: Zahid Mahmud, President
Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 16, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Sara512, Inc., t/a Unique Pizza and Subs Restaurant & Lounge, License Number H-AP-SS-4732 (hereinafter Licensee).

¹On June 11, 2010, Licensee's trade name changed from East Coast Deli & Catering to Unique Pizza and Subs Restaurant & Lounge.

The citation contains five counts.

The first count charges Licensee with violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations [40 Pa. Code §5.41], in that on November 1, 2008, March 11, April 2 and 24, 2009, Licensee, by its servants, agents or employees, operated its licensed establishment without a valid health permit or license, which expired on November 30, 2007.

The second count charges Licensee with violation of Section 5.23(a) of the Liquor Control Board Regulations [40 Pa. Code §5.23(a)], in that during the period March 14 through July 23, 2009, Licensee, by its servants, agents or employees, failed to appoint a Board-approved full-time manager for the licensed premises.

The third count charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §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 years immediately preceding May 27, 2009.

The fourth count charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)], in that on May 27, 2009, Licensee, by its servants, agents or employees, failed to keep records on the licensed premises.

The fifth count charges Licensee with violation of Section 493(2) of the Liquor Code [47 P.S. §4-493(2)], in that on March 31, April 7, 10, 14, 28, May 2, 5, 15 and 19, 2009, Licensee, by its servants, agents or employees, paid for purchases of malt or brewed beverages with other than Licensee's checks.

An administrative hearing was conducted on August 10, 2010, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee's President Zahid Mahmud appeared on behalf of Licensee corporation.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on March 30, 2009, and completed its investigation on September 9, 2009. (Exhibit C-3)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by amended letter dated September 29, 2009, which was sent by certified mail and received by Licensee on September 30, 2009. (Exhibit C-4)

3. The citation was issued on October 16, 2009, and was sent by certified mail and received by Licensee on October 19, 2009. (Exhibits C-5, C-6)

COUNT 1

4. On May 13, 2009, at 1:00 p.m., a Liquor Enforcement officer conducted an open inspection of Licensee's premises in the presence of Licensee's corporate President and Shareholder Zahid Mahmud. (N.T. 9)

5. During the course of this inspection, the Enforcement officer noted that there was no Health Permit or license posted on the premises. Upon inquiry, Mr. Mahmud was unable to locate any Health Permit or license. (N.T. 10)

6. On May 14, 2009, the Enforcement officer contacted the Allegheny County Department of Health and was advised that Licensee's Health Permit expired on November 30, 2007, and had not been renewed until the date of this inquiry. The Enforcement officer obtained a certification from the Allegheny County Department of Health reflecting that Licensee did not have a valid Health Permit or license for its licensed premises for the period November 1, 2008 through April 24, 2009. (N.T. 13-14, Exhibit C-8)

7. On November 1, 2008, March 11, April 2 and 24, 2009, another Enforcement officer made undercover visits to Licensee's premises and observed the premises open for business and engaging in the service of alcoholic beverages to the patronage. During each visit, the Enforcement officer purchased liquor and/or malt or brewed beverages from bartenders on the premises. (N.T. 43-45)

COUNT 2
May 27, 2009

8. During the Enforcement officer's visit to Licensee's premises on May 27, 2009, inquiry was made regarding Licensee's Board-approved manager. Mr. Mahmud advised the Enforcement officer that he appointed his bartender Heather Digman and filed the necessary forms with the PLCB. (N.T. 22)

July 27, 2009

9. On July 27, 2009, at 10:40 p.m., the Enforcement officer entered Licensee's premises and identified himself to Anita Sheetz who was tending bar. Upon requesting to speak with Manager Heather Digman, Ms. Sheetz advised that she was not working but that the owner and manager, Jessica Edna Stahl was present. (N.T. 28)

10. The Enforcement officer spoke with Ms. Stahl who advised that she had been appointed as Board-approved manager on July 24, 2009. The Enforcement officer verified this appointment with the Board. (N.T. 28-29)

11. The records of the Board reveal that Edward Blodgett was listed as Licensee's manager from the period January 7, 2008 through July 23, 2009. (N.T. 11-12, Exhibit C-7)

12. Mr. Edward Blodgett testified that he had no involvement with the operation of Licensee's premises and performed no duties as manager for the period March 14, 2009 through July 23, 2009. (N.T. 47)

COUNTS 3 AND 4
May 13, 2009

13. On May 13, 2009, the Enforcement officer during the course of his routine inspection requested to review all records maintained as the result of the operation of Licensee's premises. (N.T. 10)

14. In conversation with Mr. Mahmud, the Enforcement officer was advised that Mr. Mahmud had a falling out with his partners and the Board-approved Manager Edward Blodgett and that Mr. Mahmud has been operating the licensed establishment on his own since approximately March 13, 2009. (N.T. 10)

15. Mr. Mahmud further advised the Enforcement officer that he was unable to locate the requested records. Accordingly, the Enforcement officer left Mr. Mahmud with a written Request for Records prior to departing the premises. (N.T. 10-11)

May 27, 2009

16. On May 27, 2009, the Enforcement officer returned to Licensee's premises and met with Mr. Mahmud for the purpose of reviewing the requested records. (N.T. 15-16)

17. During this visit, Mr. Mahmud was unable to produce any monthly income and disbursement records or any checking account records prior to January 2009. (N.T. 16, 22)

COUNT 5

18. During the inspection of May 27, 2009, the Enforcement officer was provided with 11 invoices for the purchase of malt or brewed beverages from Kelly's Beer Distributing reflecting that payments for such purchases were made in cash. (N.T. 16-17, Exhibit C-9)

19. These invoices are listed as follows:

March 31, 2009	Invoice #51747	\$391.30
April 7, 2009	Invoice #51874	\$247.22
April 10, 2009	Invoice #51933	\$96.67
April 14, 2009	Invoice #52005	\$173.18
April 23, 2009	Invoice #52179	\$246.85
April 28, 2009	Invoice #52272	\$260.97
May 2, 2009	Invoice #52363	\$35.20
May 5, 2009	Invoice #52411	\$311.05
May 12, 2009	Invoice #52542	\$198.65
May 15, 2009	Invoice #52604	\$106.41
May 19, 2009	Invoice #52666	\$344.38

(N.T. 17-21, 26, Exhibit C-9)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On November 1, 2008, March 11, April 2 and 24, 2009, Licensee, by its servants, agents or employees, operated its licensed establishment without a valid health permit or license, which expired on November 30, 2007, in violation of Section 437 of the Liquor Code and Section 5.41 of the Liquor Control Board Regulations.
3. During the period March 14 through July 23, 2009, Licensee, by its servants, agents or employees, failed to appoint a Board-approved full-time manager for the licensed premises, in violation of Section 5.23(a) of the Liquor Control Board Regulations.
4. 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 years immediately preceding May 27, 2009, in violation of Section 493(12) of the Liquor Code.
5. On May 27, 2009, Licensee, by its servants, agents or employees, failed to keep records on the licensed premises, in violation of Section 493(12) of the Liquor Code.
6. On March 31, April 7, 10, 14, 28, May 2, 5, 15 and 19, 2009, Licensee, by its servants, agents or employees, paid for purchases of malt or brewed beverages with other than Licensee's checks, cashier's checks or money orders, in violation of Section 493(2) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violations as charged in Counts one through five of this citation by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PRIOR RECORD:

Licensee has been licensed since January 7, 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 of not less than \$50.00 or more than \$1,000.00 or both for violations of the types found in this case.

In consideration of the fact that Counts three and four of this citation arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

In mitigation, the record discloses that this citation represents Licensee's first violations.

For the foregoing reasons, the following penalties shall be imposed:

Count one - \$150.00.

Count two - \$200.00.

Counts three and four (Merged) - \$250.00.

Count five - \$100.00.

ORDER:

THEREFORE, it is hereby ordered that Sara512, Inc., t/a Unique Pizza and Subs Restaurant & Lounge, License Number H-AP-SS-4732, pay a fine of \$700.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

SARA512, INC.
Citation Number 09-2377

Jurisdiction is retained to ensure compliance with this Order.

Dated this 2ND day of September, 2010.



Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

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

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SARA512, INC.