

Mailing Date: AUG 18 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2579
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-400752
	:	
1559 OTR INC.	:	
1559 E. HUNTING PARK AVE.	:	LID - 47179
PHILADELPHIA PA 19124-4937	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-1987	:	

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 November 10, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 1559 OTR, Inc., License Number R-AP-SS-1987 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, March 2, 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 Sections 491(1), 492(2), 492(3) and 493(16) of the Liquor Code, 47 P.S. Sections 4-491(1), 4-492(2), 4-492(3) and 4-493(16) in that on October 5 and 10, 2009, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when the Restaurant Liquor License was suspended at Citation No. 08-2372.

The second count charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 15.62(a), in that on October 5 and 10, 2009, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

The third count charges Licensee with violation of Section 15.62(c) of the Liquor Control Board Regulations, 40 Pa. Code Section 15.62(c), in that on October 5 and 10, 2009, Licensee, by its servants, agents or employees, failed to remove the license from display as directed by the Office of Administrative Law Judge at Citation No. 08-2372.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on September 17, 2009 and ended on October 10, 2009. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation dated November 10, 2009 was sent to the licensed premises by certified mail, return receipt requested. That notice was signed as received on November 12, 2009. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises dated January 14, 2010 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received at the licensed premises on January 19, 2010 (N.T. 14-16 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement was assigned to do a suspension check which was to begin on October 5, 2009 and to continue thereafter until some condition had been met. The suspension was due to begin on October 5, 2009 at 7:00 a.m. At approximately 7:40 p.m., the officer went to the licensed premises and found that it was open and operating (N.T. 6-7).

3. The officer walked in the front door and saw approximately eight patrons inside the premises. The officer ordered a forty ounce bottle of Coors Lite beer to go. He paid \$3.50 for the beer (N.T. 7-8).

4. The officer left the premises at 7:50 p.m. The officer noted that the license was posted behind the bar (N.T. 8).

5. The officer noted that no suspension placard was posted on the premises (N.T. 9).

6. The officer contacted the Office of Administrative Law Judge to verify the suspension and was told that the fine had not been paid and that the licensed premises was still under suspension (N.T. 10-11).

7. The officer's supervisor contacted the Office of Administrative Law Judge on Friday, October 9, 2009 to verify the suspension. The officer then visited the licensed premises on October 10, 2009 (N.T. 11).

8. On October 10, 2009, the officer noted that there was a bartender on duty and eight patrons on the premises all with drinks in front of them. The officer was accompanied by another officer from the Bureau. They arrived at 2:30 p.m. They made no purchases of alcoholic beverages, but did observe other transactions in the nature of exchanges of money for alcoholic beverages. The officer saw money on the bar. The license was still displayed behind the bar (N.T. 11-12).

9. The officer saw no suspension placard on the premises (N.T. 13).

10. The officer identified himself to the bartender and told him that the premises was under suspension. The bartender closed down the premises and the patrons were asked to leave. When the premises was locked, the officer departed (N.T. 13-14).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On October 5 and 10, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when the Restaurant Liquor License was suspended at Citation No. 08-2372, in violation of Sections 491(1), 492(2), 492(3) and 493(16) of the Liquor Code, 47 P.S. Sections 4-491(1), 4-492(2), 4-492(3) and 4-493(16).

Count No. 2 - On October 5 and 10, 2009, Licensee, by its servants, agents or employes, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension, in violation of Section 15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 15.62(a).

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Count No. 3 - On October 5 and 10, 2009, Licensee, by its servants, agents or employees, failed to remove the license from display as directed by the Office of Administrative Law Judge at Citation No. 08-2372, in violation of Section 15.62(c) of the Liquor Control Board Regulations, 40 Pa. Code Section 15.62(c).

PRIOR RECORD:

Licensee has been licensed since May 14, 2001, and has a record of prior violations as follows:

Citation No. 02-1053. \$1,000.00 fine.

1. Sales to minors.
March 13, 2002.
2. Minors frequenting.
March 13, 2002.

Citation No. 05-1182. \$1,500.00 fine.

1. Sales to a minor.
May 12, 2005.
2. Minor frequenting. (Withdrawn by Bureau)
May 12, 2005.

Citation No. 08-2372. \$1,000.00 fine and R.A.M.P. training mandated. Fine not paid and license suspended one day and thereafter until fine paid.

1. Sales to a visibly intoxicated person.
July 3, 2008.

DISCUSSION:

No one appeared on behalf of the Licensee to offer any explanation or otherwise defend the charges. Under the circumstances, monetary penalties and a period of suspension shall be imposed.

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 Count Nos. 2 and 3 of this case.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 1 of this case.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - Two days suspension.
- Count No. 2 - \$200.00.
- Count No. 3 - \$100.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 1559 OTR, Inc., License Number R-AP-SS-1987, 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 the Restaurant Liquor License of 1559 OTR, Inc., License Number R-AP-SS-1987, be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, November 8, 2010 and **ENDING** at 7:00 a.m. on Wednesday, November 10, 2010.

Licensee is directed on Monday, November 8, 2010 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

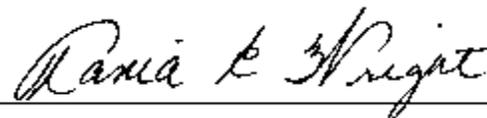
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Wednesday, November 10, 2010 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

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

Dated this 2ND day of AUGUST, 2010.



Tania E. Wright, J.

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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

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

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