

Mailing Date: MAR 22 2011

[Appeal](#)
[Amended Order](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2651
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-402224
	:	
KENRICH ATHLETIC CLUB	:	
121 S. 19 TH ST.	:	LID - 1117
PHILADELPHIA PA 19103-4905	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1927	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

**FRANCIS TWARDY
PRO SE**

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 17, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kenrich Athletic Club, License Number C-1927 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, September 29, 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 contains two counts.

The first count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), in that on October 16, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The second count charges Licensee with violation of Section 13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), in that on October 16, 2009, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited domestic beer and bottom shelf liquor well drinks were served for the set price of \$25.00.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on October 30, 2009. The investigation concluded on October 16, 2009. A notice of violation was sent on October 30, 2009 to the licensed premises by certified mail, return receipt requested. A citation was issued on November 17, 2009. The citation was sent by certified mail to the licensed premises on November 17, 2009. It was signed as received at the licensed premises on November 18, 2009 (N.T.).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. In conjunction with that investigation, he visited the premises on October 16, 2009. The officer visited the premises with regard to a complaint of an open bar. On October 16, 2009, the officer arrived at the premises at 10:40 p.m. He was accompanied by a second officer (N.T. 6).

3. The officers were greeted at the front door by a doorman who requested to see their identification. Both entered as soon as they were determined to be of legal drinking age. They were

not questioned with regard to membership. When the officers entered, they went to the main hall where a female was seated at a register. She asked them what special they wanted for the evening. They questioned her as to what specials were available. She indicated that they could pay ten dollars and receive a free cocktail or pay twenty-five dollars and receive an open bar until midnight (N.T. 6-7).

4. The female did not ask for any membership identification. The officers are not members of the club nor have they ever been a member of the club. They were not asked to provide any sort of identification showing that they were a member (N.T. 8-9).

5. The officers both accepted the twenty-five dollar open bar special and the officer paid the female fifty dollars for himself and the other officer. She asked for their hands and she put a yellowish green wristband on them. She indicated that would identify to the bartender the special to which they were entitled (N.T. 9).

6. At approximately 10:45 p.m., the second Enforcement officer approached the bar first and ordered a twelve ounce bottle of Miller Lite beer and a vodka and cranberry. He did not pay any additional monies for these drinks (N.T. 9).

7. The investigating officer approached the bar and ordered a twelve ounce Miller Lite beer and rum and coke. He did not pay any additional monies for the drinks (N.T. 10).

8. The officer watched the drinks being prepared and noted that there was alcohol placed in the drinks (N.T. 10).

9. After the officers received their drinks, they sat at a table by the bathroom. The assisting officer dumped his drink in the bathroom and came out. When he came out, the other officer went in and dumped his drink. At approximately 11:15 p.m., they went to the bar and ordered two more drinks (N.T. 10-11).

10. The officers ordered a twelve ounce Miller Lite and vodka and sprite. They were not questioned as to membership nor were they asked for additional monies (N.T. 11).

11. The officers left the premises at approximately 11:30 p.m. When the officers left, there were twenty-five to thirty people on the premises. At no time were the officers asked about membership (N.T. 12).

12. Prior to the date of violation, one officer indicated he visited the premises on two or three prior occasions. The officer indicated that on this date of investigation, he had not signed a membership application (N.T. 21-22).

13. The officer indicated that he signed a membership application on the date of the raid by the Bureau, May 2, 2010 (N.T. 24-25).

14. Mr. Twardy explained the procedure that he states is used at the club. When someone enters the building, they fill out a membership application. At the next Board meeting, the application is voted on. If they want to come in on the same night that they sign the application, they must come in as someone's guest. Members swipe their cards and that is how they are identified. That information is retained and verified through a laptop computer with a scanner (N.T. 30).

15. Mr. Twardy indicated that when patrons come into the premises, they are given seven drink tickets for twenty-five dollars (N.T. 31).

16. The computer was confiscated on May 2, 2010, on which Mr. Twardy claims could have verified membership of the officer (N.T. 32 and Exhibit L-2).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On October 16, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1).

Count No. 2 - On October 16, 2009, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited domestic beer and bottom shelf liquor well drinks were served for the set price of \$25.00, in violation of Section 13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3).

PRIOR RECORD:

Licensee has been licensed since August 17, 1960, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 07-1376. \$1,500.00 fine.

1. Sales to nonmembers.
February 17, March 7 and April 1, 2007.
2. Sales between 3:00 a.m. and 7:00 a.m. April 1, 2007.

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3. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. April 1, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
April 1, 2007.

Citation No. 07-3003. \$3,500.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
September 8, 2007.
2. Sales to nonmembers.
May 18 and September 8, 2007.

3. Sales between 3:00 a.m. and 7:00 a.m. September 8, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
September 8, 2007.
5. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. September 8, 2007.
6. Sold an unlimited or indefinite amount of alcoholic beverages for a fixed price. May 18, 2007.
7. Improper admission of members.
May 18, 2007.

Citation No. 08-0930. \$1,000.00 fine and ten days suspension.

1. Used loudspeakers or devices whereby music could be heard outside. March 8, 2008.
2. Interfered with an Enforcement officer in the performance of his duties.
March 8, 2008.

Citation No. 08-2299. \$3,000.00 fine and one day suspension continuing thereafter until the fine is paid.

1. Used loudspeakers or devices whereby music could be heard outside.
April 6, 2008.
2. Sales between 3:00 and 7:00 a.m. April 6, 2008
3. Improper admission of members.
April 6, 2008.

Citation No. 08-3062. \$1,750.00 fine and one day suspension continuing thereafter until the fine is paid.

1. Sales to nonmembers.
November 8 and 22, 2008.
2. Used loudspeakers or devices whereby music could be heard outside.
November 8 and 22, 2008.

DISCUSSION:

The Court listened to testimony of the officer and did in fact find the officer to be credible. The officer states that at the time of his October 16, 2009 visit to the premises, he was not a member of the licensed club. Further, he was not a member and did not swipe a membership card upon entering the premises. The Administrative Law Judge is responsible for determining the credibility of the witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robinson*, 501 A.2d 82 (Pa. Cmwlth. 1989). However, the officer indicated that on the date of the raid, May 2, 2010, he filled out a membership application. The club steward and Licensee's witness indicated that they are not able to verify that information because of a computer that was confiscated from them on May 2, 2010. It is agreed that the computer was removed from the premises by the State Police, confiscated pursuant to a raid, and that computer is currently in the hands of the Bureau and not in the hands of the Licensee.

The case was originally scheduled for March 3, 2010. Licensee was provided with a prehearing memorandum from the Bureau summarizing the testimony and witnesses to be presented as early as December of 2009. Attorney Donald Moser entered his appearance in this matter on March 2, 2010. Licensee presented no pre-hearing memorandum, requested no

information nor asked for any evidence that may have been in the hands of the Bureau. Licensee may not now assert that this information is essential to their defense. *See* Citation No. 10-1196.

With regard to the drink special, the officer indicated that officers entered the premises, without question as to membership, paid twenty-five dollars, were given bracelets and were allowed to consume unlimited amounts of alcoholic beverages, just by showing the bracelets. The Court is not convinced by Mr. Christopher Twardy's argument that seven drink tickets were given nor is the Court implying that if the seven tickets were given for twenty-five dollars, that would be an acceptable practice.

Under the circumstances, a monetary penalty shall be imposed. Licensee continues to jeopardize its license by operating this facility without regard to the restrictions of its club license.

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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$750.00.
Count No. 2 - \$350.00.

Accordingly, we issue the following

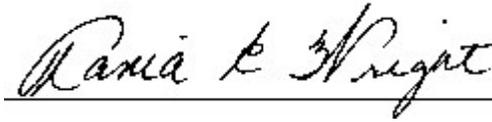
ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kenrich Athletic Club, License Number C-1927, pay a fine of One Thousand One Hundred Dollars (\$1,100.00) 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.

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

Dated this 10TH day of MARCH, 2011.

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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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Detach Here and Return Stub with Payment

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** 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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Kenrich Athletic Club