

Mailing Date: OCT 08 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2798
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-402246
v.	:	
	:	LID - 59075
PFDJ, INC.	:	
T/A TAILGATERS SPORTSBAR	:	
501-503 DUNMORE ST.	:	
THROOP, PA 18512-1148	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-10413	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: NO APPEARANCE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 9, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PFDJ, INC., License Number R-AP-SS-EHF-10413 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)] in that on October 14, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor license expired on September 30, 2009 and had not been renewed and/or validated.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(1) of the Clean Indoor Air Act [35 P.S. §637.6(a)(1)] in that on October 14, 2009, Licensee, by its servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act.

The third count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)] in that on October 14, 2009, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The investigation which gave rise to the citation began on October 14, 2009 and was completed on November 3, 2009; and notice of the violation was sent to Licensee by Certified Mail on November 18, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 8, 2010 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 501-503 Dunmore Street, Throop, PA 18512-1148, by certified mail, return receipt requested and by first class mail on May 7, 2010. The notice set forth the date and time of the hearing as July 8, 2010 at 2:30 p.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1, 2 AND 3

1. As of October 14, 2009 Licensee had not submitted an application for a smoking exemption, and had not been granted a smoking exemption by the Pennsylvania Department of Health pursuant to the Pennsylvania Clean Indoor Air Act to permit smoking on the licensed premises (N.T. Exhibit C-5).
2. As of October 14, 2009 Licensee did not possess a valid liquor license or temporary authority to dispense alcoholic beverages on the licensed premises (N.T. Exhibit C-6).
3. On October 14, 2009, an officer of the Bureau entered the licensed premises at 6:45 p.m. (N.T. 6-7).
4. Upon entry the officer observed that Sharon Remida, the Board approved manager was tending bar and rendering service to 20 patrons (N.T. 7).
5. The officer observed that patrons in the establishment were smoking. There were ashtrays and cigarettes in the premises (N.T. 7).
6. The officer approached Remida and ordered a bottle of Coors Light beer for which he paid \$2.00 (N.T. 7).

7. The officer identified himself to Remida and told her that she needed to provide temporary authority or cease and desist the sale of alcoholic beverages. When she could not provide such authority the officer told her to cease and desist the sale of alcohol (N.T. 7).

8. The officer observed that there were no signs posted relative to smoking on the licensed premises (N.T. 7).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since October 23, 2007, and has had three prior violations:

Citation No. 08-1985. Fine \$200.00.

1. Failed to notify the Board within 15 days of a change of manager. June 2, 2008.

Citation No. 09-0411. Fine \$100.00.

1. Permitted smoking in a public place where smoking was prohibited. January 17, 2009.

Citation No. 09-2519. Fine \$1,250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Sales after the license expired and had not been renewed and/or validated. October 2, 2009.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 1 of this case.

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 type found in Counts 2 and 3 of this case.

Counts 2 and 3 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$1,500.00 fine
Counts 2 and 3 merged - \$300.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee PFDJ, INC., pay a fine of \$1,800.00 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.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 22ND day of September, 2010.



Daniel T. Flaherty, Jr., J.

an

MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

Detach here and submit 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.** Make 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

