

Mailing Date: MAR 15 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0135
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-391617
v.	:	
	:	LID - 57466
TIMOTHY K. TINDALE	:	
1239 MARKET ST.	:	
HARRISBURG, PA 17103-2229	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-EHF-18685	:	
	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: John H. Pietrzak, Esquire
LICENSEE: Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 25, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Timothy K. Tindale (Licensee), License Number R-AP-SS-EHF-18685.

This citation¹ contains five counts.

The first count charges Licensee with a violation of Section 404 of the Liquor Code [47 P.S. §4-404]. The charge is that on April 2, June 6, July 18, September 9, 28, October 14 and November 2, 2009, Licensee, by servants, agents or employes, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

1. Commonwealth Exhibit No. C-3, N.T. 15.

The second count charges Licensee with violations of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that from January 1 through April 19, 2009, Licensee, by servants, agents or employes, operated his licensed establishment without a valid health permit or license, which expired on December 31, 2008.

The third count charges Licensee with violations of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on September 10, 21 and 28, 2009, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

The fourth count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding September 28, 2009.

The fifth count charges Licensee with violations of Section 492(8) of the Liquor Code [47 P.S. §4-492(8)]. The charge is that on January 25, 31, February 1, 6, 8, 15, 22, March 1, 8, 15, 27, 29, 31, April 5, 12, 16, 22, 26, 30, May 3, 10, 22, 31, June 3, 21, July 19, 25, 26, 29, August 2, 6, 16, 23, 27, 28, September 10, 13, 20 and 26, 2009, Licensee, by servants, agents or employes, transported malt or brewed beverages without a license.

An evidentiary hearing was conducted on February 3, 2011 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 27, 2009 and completed it on December 21, 2009. (N.T. 19-20)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 20, 2010. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 15)

Count No. 1:

3. Licensee and the Pennsylvania Liquor Control Board entered into a Conditional Licensing Agreement (CLA). (Commonwealth Exhibit No. C-4, N.T. 20)

4. On April 2, 2009, a Bureau Enforcement Officer entered the premises in an undercover capacity. He was not searched by use of a metal detection wand. The Officer was also not asked for identification. [CLA, Paragraphs 6(b) and (c)], (N.T. 22-23)

5. The Officer returned to the premises in an undercover capacity on June 6, 2009 at 8:50 p.m. The Officer entered without verifying identification and without being searched by a metal detection device. Other patrons entered the premises in the same manner. [CLA, Paragraphs 6(b) and (c)], (N.T. 31-33)

6. The Officer made a third undercover visit on July 18, 2009, at 8:45 p.m., and again was not asked for identification or searched via a metal detection device. [CLA, Paragraphs 6(b) and (c)], (N.T. 35)

7. During the open inspection of September 28, 2009, a Bureau Enforcement Officer asked Licensee if he had been maintaining a record of his contacts with the Harrisburg Police Department as required by the CLA, Paragraph 6(f). Mr. Tindale presented a piece of paper with a total of twelve dates as follows: March 18, March 21, March 24, March 29, March 30, April 2, April 5, June 6, June 7, June 11, June 12, June 18, 2009. There was no indication of the nature of the contact on those dates. [CLA, Paragraph 6(f)], (N.T. 61-63)

8. During the visit of September 28, 2009, an Officer asked Licensee if his video surveillance was operational. While it appeared the cameras were operational, Licensee could not operate the recording system. [CLA, Paragraph 6(h)], (N.T. 63-65)

9. The Officers inquired if Licensee familiarized himself with the operation of the recording system. Licensee was unable to do so. Licensee referred the Officers to the installer. One Officer contacted the installer on October 27, 2009 to schedule an appointment with Licensee. They agreed to meet at the licensed premises on November 2, 2009. That meeting never occurred as Mr. Tindale cancelled it because of a burglary at the premises immediately prior to November 2, 2009. [CLA, Paragraph 6(h)], (N.T. 75-77)

Count No. 2:

10. Several Bureau Enforcement Officers conducted an additional administrative inspection of the premises on October 14, 2009. The premises was open and in operation. Licensee indicated he was open and in operation during the period charged in Count No. 2. During the period charged, Licensee knew he did not have a current health license which had expired on December 31, 2008, yet continued to operate. (N.T. 70-73, Commonwealth Exhibit No. C-5)

Count Nos. 3 and 4:

11. Two Bureau Enforcement Officers entered the premises on September 9, 2009, at approximately 6:35 p.m. to conduct an administrative inspection. They identified themselves after determining the bar was open for business. There were two video cameras mounted inside the premises. Receiving permission to go upstairs in an unlicensed area, one Officer was able to observe the monitoring system. The Officer's left a request for records with the individual in charge indicating they would return on September 10, 2009 at approximately 10:00 a.m. The Officer spoke to Mr. Tindale by telephone, who advised the Officer that his records were with his accountant and that he had no access to them. Mr. Tindale was asked to get the records together for presentation at a later date. (N.T. 47-53; 69)

12. On September 21, 2009, a Bureau Enforcement Officer again contacted Licensee leaving a voice message requesting Licensee to contact the Officer to schedule an appointment to review Licensee's records. Licensee returned the call approximately an hour later. He informed the Officer that he still did not have the records as they were still with his accountant. (N.T. 55)

13. With Licensee's permission, the Officer called Licensee's accountant who advised the Officer that she needed the weekend to complete whatever accounting she had to do with the records and that Licensee would have them available for review on September 28, 2009. On September 28, 2009, two Bureau Enforcement Officers went to the premises arriving at 2:05 p.m. based on a previously scheduled meeting with Licensee. Licensee presented some records. The records were deficient as there were beer invoices missing. Licensee admitted that he retained those records somewhere off the licensed premises. Licensee did not maintain any cash register receipts. Licensee indicated he does not use the cash register. (N.T. 56-59)

Count No. 5:

14. On the dates charged, Licensee purchased beer at a Distributor for his business which he transported to the licensed premises. (N.T. 16-18)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. Licensee, by servants, agents or employes, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license, on April 2, June 6, July 18, September 9, 28 and October 14, 2009.

Count Nos. 2, 3, 4 and 5:

3. **Sustained** as charged.

DISCUSSION:

I cannot sustain the date of November 2, 2009, as to Count No. 1 because there was no determination that the premises was open for business. Without that, there is no violation.

Licensee argues that the Agreement is vague. I agree with Licensee that there are provisions which are vague but those that he violated were exceedingly clear.

PRIOR RECORD:

Licensee has been licensed since April 4, 2007, and has had three prior violations (Commonwealth Exhibit No. C-6):

Adjudication No. 07-2523. Fine \$1,350.00 and 2 days suspension.

1. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license. May 9, July 4, 7 and 10, 2007.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 A.M. July 1, 2007.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time. July 1, 2007.
4. Engaged in disorderly conduct on the licensed premises. July 11, 2007.
5. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years. July 16, 2007.
6. Failed to clean coils at least once every 7 days. April 12 through July 16, 2007.

Adjudication No. 08-1093. Fine \$2,800.00 and 2 days suspension.

1. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license.
August 12, 2007 and August 20, 2007 through March 19, 2008.
2. Sales to minors.
August 12 and December 22, 2007.
3. Minors frequenting.
August 12 and December 22, 2007 and one other occasion within the past year.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
January 12, 2008.
5. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 A.M.
January 12, 2008.
6. Permitted entertainment and/or dancing during prohibited hours.
January 12, 2008.

Adjudication No. 08-2846. Fine \$1,350.00.

1. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license.
April 5 through September 15, 2008.
2. Used loudspeakers or devices whereby music could be heard outside.
April 5 and September 26, 2008.
3. Failed to keep records on the licensed premises.
May 1 and 27, 2008.
4. Transported malt or brewed beverages without a license.
September 30, 2008.

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 type found in Count Nos. 1, 2, 3, 4 and 5 in this case.

I adopt the Bureau's recommended penalties as follows:

Count 1 - \$1,000.00.
Count 2 - \$150.00.
Count 3 - \$450.00.
Count 4 - \$450.00.
Count 5 - \$450.00.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,500.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 28TH day of February, 2011.



Felix Thau, A.L.J.

pm

NOTICE: 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 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

Citation No. 10-0135
TIMOTHY K. TINDALE