

Mailing Date: FEB 01 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0208
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-397831
	:	
J & J TRESTLE INN INC.	:	
339 NORTH 11 <sup>TH</sup> STREET	:	LID - 9579
PHILADELPHIA PA 19107-1307	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-OPS-729	:	

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 March 2, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against J & J Trestle Inn, Inc., License Number R-AP-OPS-729 (hereinafter "Licensee").

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

The first 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 employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding July 31, 2009.

The second 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 July 31, 2009, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2008.

The third count charges Licensee with violation of Section 491(10) of the Liquor Code, 47 P.S. §4-491(10), in that on July 31, 2009, Licensee, by its servants, agents or employes refilled liquor bottles.

The fourth count charges Licensee with violation of Section 491(10) of the Liquor Code, 47 P.S. §4-491(10), in that on July 31, 2009, Licensee, by its servants, agents or employes fortified, adulterated and/or contaminated liquor.

#### COUNT NOS. 1, 2, 3 AND 4

#### FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on July 23, 2009 and ended on September 14, 2009. A notice of violation letter dated January 13, 2010 was sent to the licensed premises by certified mail, return receipt requested. The mailing was returned unclaimed. A citation dated March 2, 2010 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received at the licensed premises on March 19, 2010. The Office of Administrative Law Judge sent a citation hearing notice to the president of the licensed premises, in that according to the records of the Pennsylvania Liquor Control Board, the license was in safekeeping. That certified mailing was returned unclaimed. The safekeeping records indicate that the license was received into safekeeping on November 1, 2009 and that a person to person transfer was pending (N.T. 1-7 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises in July of 2009. The investigation was based upon an anonymous complaint alleging that Licensee had refilled and watered down liquor. The officer visited the premises on July 31, 2009 at approximately 4:00 p.m. accompanied by a second officer from the Bureau of Enforcement (N.T. 7-8).

3. When the two officers arrived, the premises was open and operating. There was one patron inside and one bartender. The officer spoke with John Wigfall, who was identified as the president of the licensed premises. The officers advised him that they were there to conduct an open inspection. The officers looked at the bottles of liquor, which were behind the bar (N.T. 9).

4. The officers found that numerous bottles looked to be older and they were filled all the way to the top as if they had never been opened. The bottles appeared to the officers to be filled beyond normal level. Based upon their observations, they seized bottles of alcohol and placed the information on a property receipt (N.T. 10-11 and Exhibit B-3).

5. The officers found no current health permit on the premises (N.T. 11).

6. The officers packaged, corked the bottles and put evidence tape on them and had Mr. Wigfall sign for them. When they left the premises, they took the bottles to District Office #1 in Philadelphia. The officer drove the bottles to Harrisburg to the regional laboratory on August 18, 2009 (N.T. 11-12 and Exhibit B-3).

7. The bottles were signed out of the evidence room and taken to the lab in Harrisburg. They were turned over to the custodian following the evidentiary custodial procedures of the State Police. The officer signed for the bottles and picked them up after the analysis (N.T. 13-14 and Exhibit B-3).

8. As a result of the inspection and analysis of the bottles, the Licensee was cited for possession of contaminated and/or adulterated liquor (N.T. 14).

9. One of the two officers who conducted the inspection of the licensed premises on July 31, 2009 indicated that she determined that there was no health permit on the premises. She contacted the Department of Licenses and Inspections to verify whether or not the premises had a current health permit. According to the records of the city of Philadelphia Department of Licenses and Inspections, Licensee had no valid Preparing and Serving Food License on July 31, 2009. As of January 21, 2009, the date of the certification, the license had not been renewed nor a new license issued. Licensee was cited for not having a valid health permit (N.T. 14-16 and Exhibit B-7).

10. John Evans is employed by the Pennsylvania State Police in the Harrisburg regional crime laboratory as a drug unit supervisor. He is a forensic scientist. He has been a forensic scientist for approximately twenty-two and a half years. During this time, he has been a trace evidence analyst, which includes examination of fire debris, soil, gunshot residue and explosives. He has also done clandestine lab investigations and does blood alcohol and alcoholic beverage analysis (N.T. 24-25).

11. John Evans has been accredited by the American Academy of Crime Laboratory Directors to conduct all of the functions (N.T. 25).

12. When evidence is submitted to Mr. Evans, the evidence technicians accept it and it is given a unique identifier and stored in an incoming evidence vault. When the case is assigned to a particular analyst, they remove the evidence from that evidence vault and take note of the conditions, how it was received and the number of bottles. In this case, a comparison analysis was done. The contents of the bottles were examined to see if there was any obvious contamination. The percentage of alcohol was determined, the total acids, color solids and the materials and an analysis was made for fusel oils, which is part of the distillation process (N.T. 26).

13. In this case, Mr. Evans received the evidence from the Bureau of Enforcement consisting of four boxes of alcohol, one box contained eleven bottles of alcohol and another box contained eight bottles and two of the boxes contained one bottle each. The boxes were sealed when they arrived and contained a request for a forensic analysis (N.T. 29-30 and Exhibits B-3 and B-5).

14. It was determined that there was one item missing, Smirnoff Vodka No. 57, which was contained on the property list and it was subsequently brought to the lab by another officer (N.T. 46 and Exhibit B-6).

15. The bottles were placed in the evidence log and received by an evidence technician and transferred to a second evidence technician who placed the boxes in the incoming evidence log. Mr. Evans did an analysis of the items (N.T. 32 and Exhibit B-4).

16. Of the bottles, ten were determined to not agree with the analysis of the authentic sample and determined to be refilled and contaminated. Others were determined to be a true samples (Exhibit B-4).

#### CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - There is insufficient evidence to determine that Licensee, by its 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 July 31, 2009, in violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12).

Count No. 2 - On July 31, 2009, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2008, in 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.

Count No. 3 - On July 31, 2009, Licensee, by its servants, agents or employes refilled liquor bottles, in violation of Section 491(10) of the Liquor Code, 47 P.S. §4-491(10).

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Count No. 4 - On July 31, 2009, Licensee, by its servants, agents or employes fortified, adulterated and/or contaminated liquor, in violation of Section 491(10) of the Liquor Code, 47 P.S. §4-491(10).

PRIOR RECORD:

Licensee has been licensed since September 28, 1978, and has a record of prior violations as follows:

Citation No. 92-1790. \$200.00 fine.

1. Refilled liquor bottles.
2. Fortified, adulterated and/or contaminated liquor.

Citation Nos. 94-0907 and 94-1452 Consolidated. Three days suspension.

1. Permitted entertainers to contact or associate with patrons for a lewd, immoral or unlawful purpose.  
March 27, 1994.
2. Permitted lewd, immoral or improper entertainment.  
March 27, 1994.
3. Fortified, adulterated and/or contaminated liquor.  
March 18, 1994.
4. Refilled liquor bottles.  
March 18, 1994.

Citation No. 95-1043. Seven days suspension.

1. Fortified, adulterated and/or contaminated liquor.  
March 10, 1995.
2. Refilled liquor bottles.  
March 10, 1995.

Citation No. 96-0702. Two days suspension.

1. Transported malt or brewed beverages into this Commonwealth on which the tax was not paid.  
March 14, 1996.

Citation No. 96-2124. Four days suspension.

1. Refilled liquor bottles.  
May 23, 1996.
2. Fortified, adulterated and/or contaminated liquor.  
May 23, 1996.

Citation No. 97-0543. Five days suspension.

1. Fortified, adulterated and/or contaminated liquor.  
October 17, 1996.
2. Refilled liquor bottles.  
October 17, 1996.

Citation No. 98-0910. \$1,000.00 fine and seven days suspension.

1. Refilled liquor bottles.  
January 30, 1998.
2. Fortified, adulterated and/or contaminated liquor.  
January 30, 1998.

Citation No. 98-1773. \$1,200.00 fine and 14 days suspension.

1. Obtained liquor from sources other than Pennsylvania State Stores.
2. Stored alcoholic beverages on premises not covered by the license.

Citation No. 00-0514. \$1,150.00 fine and 21 days suspension with thereafter conditions.

1. Failed to display on the licensed premises documentary evidence that the premises meets all sanitary requirements for a public eating place.
2. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store.
3. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 00-0829. Four days suspension.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises.

#### DISCUSSION:

Licensee did not have a valid health permit according to the records of the Philadelphia Department of Licenses and Inspections on the date of July 31, 2009. With regard to the contaminated liquor, the Bureau of Enforcement confiscated liquor on the premises which appeared to be in worn bottles and were completely filled, which indicated that they might be refilled. They were submitted through a chain of custody to the police lineup and analyzed by competent technicians by comparing them to true samples of the same product. After analyzing the contents, it was determined that many of the bottles were refilled and contaminated.

The Bureau stated that the business is no longer operating. The license was placed into safekeeping. The officer also indicated that there was a recent fire and the building is burned down. According to more recent information, the license is to be sold at the sheriff's sale.

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Under the circumstances, a monetary penalty shall be imposed. Licensee has an extensive prior history, however, there appear to have been no violations since 2000.

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 - DISMISSED.  
Count No. 2 - \$250.00.  
Count Nos. 3 and 4 (as merged) - \$750.00.

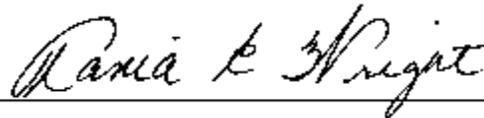
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, J & J Trestle Inn, Inc., License Number R-AP-OPS-729, pay a fine of One Thousand Dollars (\$1,000.00) 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 21<sup>ST</sup> day of January, 2011.



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

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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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