

Mailing Date: DEC 17 2010

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : Citation No. 10-0373  
LIQUOR CONTROL ENFORCEMENT :  
 : Incident No. W01-404642  
 :  
 v. :  
 : LID - 15584  
 :  
LFC INCORPORATED :  
4043 LANCASTER AVE :  
PHILADELPHIA PA 19104-1753 :  
 :  
PHILADELPHIA COUNTY :  
LICENSE NO. R-AP-12516 :

JUDGE SHENKLE  
BLCE COUNSEL: James E. Dailey, Esq.  
LICENSEE COUNSEL: Edward B. McHugh, Esq.

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 4, 2010. There are two counts in the citation.

The first count alleges that Licensee violated §15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), on February 8, 2010, by failing 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 second count alleges that Licensee violated §§491(1), 492(2), 492(3) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2), 4-492(3) and 4-493(16) on February 8, 2010, by selling, furnishing and/or giving alcoholic beverages during a time when its Restaurant Liquor License was suspended at Citation No. 09-1564.

A hearing was held on October 6, 2010, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

**FINDINGS OF FACT:**

1. In an adjudication of Citation No. 09-1564 mailed on November 30, 2009, I suspended this license for one day. The order provided as follows:

Licensee is directed on Monday, February 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.

2. A liquor enforcement officer visited the licensed premises at about 5:00 p.m. on February 8, 2010, and saw that the security gates of the establishment were closed. No Notice of Suspension placard was posted (N.T. 13-16, Exhibit B-3).

3. A different liquor enforcement officer visited the licensed premises at about 7:20 p.m. on February 8, 2010, and saw that the security gates of the establishment were open and the beer signs in the front window were on. The officer entered the premises and asked a woman behind the bar if he could "get something to go real quick." The woman said she did not know if she was supposed to do that. The officer said "let me get a Heineken." The woman gave the officer a bottle of Heineken beer with its cap still on. She asked if he wanted it uncapped. He said no and gave her five dollars, which she put in the cash register (N.T. 5-8).

#### CONCLUSIONS OF LAW:

Sustained as charged.

#### DISCUSSION:

Licensee presented evidence, but it did not cause me to doubt the facts set forth in the findings above. It must be remembered that the duties placed on the holders of liquor licenses are not optional or excusable. If an order directs a licensee to put up a notice of suspension at a given time and take it down at another, it makes the licensee responsible to see to it that the notice remains posted at every moment in between.

Administrative law cannot abide excuses. To allow relief from the straightforward requirements of the law on the basis of good intentions or a licensee's own negligence would be to invite chaos and lose the efficiencies of administrative adjudication.

#### PRIOR RECORD:

Licensee has been licensed since April 30, 1979, and has had prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 91-1177. 3 days suspension and thereafter until conditions verified.

1. Not a *bona fide* restaurant (insufficient food, eating utensils, dishes, cooking utensils and chairs at tables).
2. Loudspeakers could be heard outside.
3. Permitted dancing and/or entertainment without an amusement permit.
4. Minors frequenting.

Citation No. 91-2398. \$600.00 fine.

1. Not a *bona fide* restaurant (insufficient food, eating utensils, dishes, cooking utensils and chairs at tables).
2. Operated without a valid health permit or license.

Citation No. 92-1145. \$200.00 fine and 4 days suspension.

1. Sales to minors.
2. Permitted dancing without an amusement permit.
3. Not a *bona fide* restaurant (insufficient chairs at tables).

Citation No. 94-1795. Two days suspension with thereafter conditions.

1. Operated without a valid health permit or license. July 12, 1994.

Citation No. 95-0812. 1 day suspension with thereafter conditions.

1. Not a *bona fide* restaurant (insufficient food and chairs at tables). March 20, 1995.

Citation No. 95-2226. 3 days suspension.

1. Not a *bona fide* restaurant (insufficient food and dishes). August 17, 1995.
2. Operated without a valid health permit or license. August 17, 1995.

Citation No. 95-2311. \$100.00 fine. Fine not paid and license suspended for 1 day.

1. Failed to post a notice of suspension. August 7, 1995.

Citation No. 96-2476. \$200.00 fine and 1 day suspension. Suspension for late payment.

1. Sold alcoholic beverages while liquor license suspended. October 8, 1996.

Citation No. 99-0471. \$100.00 fine and 2 days suspension with thereafter conditions.

1. Loudspeakers could be heard outside. November 1, 1998.
2. Not a *bona fide* restaurant (failed to provide food upon request).  
December 10, 1998.
3. Operated without a valid health permit or license.  
October 14, November 1, December 4, 10, 1998, and January 20, 1999.

Citation No. 00-1448. \$400.00 fine and 3 days suspension with thereafter conditions.

1. Operated without a valid health permit or license. July 27, 2000.

Citation No. 03-0428. \$250.00 fine and 1 day suspension.

1. Loudspeakers could be heard outside. February 15, 2003.

Citation No. 04-1832. \$100.00 fine.

1. Failed to maintain coil cleaning records. September 9, 2004.
2. Failed to clean coils at least once every 7 days. September 9, 2004.

Citation No. 06-1961. \$200.00 fine.

1. Failed to clean coils at least once every 7 days. May 2 and July 10, 2006.

Citation No. 09-1564. 1 day suspension.

1. Loudspeakers could be heard outside. May 21, 22 and June 5, 2009.

Citation No. 09-2730. \$500.00 fine.

1. Not a *bona fide* restaurant (insufficient food, seating, utensils and dishes).  
September 19 and October 14, 2009.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count No. 1 any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in Count No. 2 any fine must be in the \$1,000.00 to \$5,000.00 range. Penalties are assessed as follows:

- Count No. 1 – suspension of license for one day.
- Count No. 2 – suspension of license for three days.

ORDER

THEREFORE it is hereby IT IS ORDERED that the Restaurant Liquor License of Licensee, L.F.C. Incorporated, License No. R-AP-12516, shall be suspended for a period of four (4) days, BEGINNING at 7:00 a.m. on Monday, January 24, 2011, and ENDING at 7:00 a.m. on Friday, January 28, 2011. Jurisdiction is retained.

Licensee is directed on Monday, January 24, 2011, 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 replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Friday, January 28, 2011, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 15<sup>TH</sup> day of November, 2010.

  
David L. Shenle, J.

jb

**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.**