

Mailing Date: DEC 23 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0545
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-397616
	:	
WALKING MILES LLC	:	
T/A MELLOW MOOD BAR AND	:	LID - 58998
GRILL	:	
1550 ADAMS AVE.	:	
PHILADELPHIA PA 19124-4556	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-250	:	

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 30, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Walking Miles, LLC, t/a Mellow Mood Bar and Grill, License Number R-AP-SS-EHF-250 (hereinafter "Licensee").

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An Administrative hearing was held on Wednesday, August 18, 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 three counts.

The first count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), in that on December 5, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on December 5, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The third count charges Licensee with violation of Sections 406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), in that on February 14, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on July 21, 2009 and ended on February 14, 2010. A notice of violation letter dated March 11, 2009 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was returned unclaimed. A citation dated March 30, 2010 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was also returned unclaimed. According to the Bureau, the first class mailing of the citation was resent by first class mailing on May 25, 2010. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on July 1, 2010 by certified mail, return receipt requested, and by first class mail. That certified mailing was returned unclaimed (N.T. 20-22 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement visited the licensed premises on July 31, 2010 at approximately 2:15 a.m. and surveyed the area. The officer was there to investigate a complaint of after hours sales. The premises was closed (N.T. 7-9).

3. The officer contacted the complainant and checked the PLCB website to make sure the license was active between July and December 5, 2009 when he again visited the licensed premises (N.T. 8-9).

4. On December 5, 2009 at 1:45 a.m., the officer visited the licensed premises along with a second officer from the Bureau. There was a female tending bar. The officer ordered a drink (N.T. 9-10).

5. The officer noted that there were other patrons who had been served alcoholic beverages. When the officer first arrived, there were about four patrons in the premises (N.T. 10).

6. At approximately 2:00 a.m., a black non-Hispanic male went outside and closed the security gates from the outside. He then came back in and locked the front door. The man turned out the lights and the windows and closed the shades. No one was asked to leave. No last call was given up to that point. At approximately 2:22 a.m., the officer asked the bartender for a Malibu Rum and pineapple mixed drink and was served the drink. He paid \$5.00 (N.T. 10-11).

7. The officer kept time by using his cellular telephone (N.T. 11).

8. At 2:50 a.m., the officer left the premises. There were approximately ten people on the premises at the time the officer departed. The officer noted that persons entered the premises using a back entrance. He indicated that there was an outside area. Patrons piled into a big empty room where a disc jockey generally played (N.T. 12).

9. When the lights went out in the front and security gates were put up and the lights turned off in the windows and the curtains closed, people entered from the rear of the premises (N.T. 13).

10. Four to five of these patrons were in the bar area when the officer left. They were consuming alcoholic beverages. In another room, there were several other patrons who remained in possession of alcoholic beverages (N.T. 13).

11. On February 14, 2010, a Saturday night into a Sunday morning, the officer again visited the licensed premises at approximately 1:50 a.m. The officer was there with another officer from the Bureau. In the front of the premises there were individual check ins for identifications and weapons. The officers paid \$15.00 a piece to enter the premises (N.T. 14-15).

12. Once inside, the officer noted that there was a female bartender rendering service of alcoholic beverages to approximately ten patrons. The officer also noted another individual behind the bar sitting there in a lounge chair covered with a blanket. The officer identified the individual as Camille Miles, the owner/manager (N.T. 15).

13. At approximately 2:00 a.m., the doors and shutters were closed. No one was asked to leave and no last call was given. The patrons continued to consume alcoholic beverages and watch television. At approximately 2:21 a.m., the officer ordered a Bacardi Rum and cranberry juice. He was charged \$6.00 for the drink (N.T. 16).

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14. The officer sent a text message to a detail of officers letting them know that he had made an after hour purchase of an alcoholic beverage. The detail arrived at the premises at 2:45 a.m. One of the security personnel indicated that there were policemen outside and she attempted to get everyone who was in the main bar to the other room. She told them they could not take their drinks with them and to leave the drinks there and move into the other area. No one was inside the bar area when the police entered (N.T. 17-18).

15. At 2:45 a.m. when the security personnel made the announcement, the officer and others were still in possession of alcoholic beverages (N.T. 18).

16. The bartender and owner/manager were taken to the police station and charged with after hour sales (N.T. 18-19).

17. The officer remained undercover when the detail of officers entered (N.T.20).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On December 5, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16).

Count No. 2 - On December 5, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a).

Count No. 3 - On February 14, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m., in violation of Sections 406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since October 17, 2007, and has a record of prior violations as follows:

Citation No. 08-2410. \$1,150.00 fine.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
August 24, 2008.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
August 24, 2008.

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3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
August 24, 2008.

Citation No. 09-1436. \$3,000.00 fine.

1. Sales on Sunday between 2:00 a.m. and 7:00 a.m.
May 16, 2009.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 16, 2009.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
May 16, 2009.

DISCUSSION:

The officer witnessed after hours sales of alcoholic beverages on December 5, 2009 and again on February 14, 2010. On December 5, 2009, patrons remained in possession of alcoholic beverages on parts of the premises habitually used for the service of alcohol or malt beverages after 2:30 a.m. The Licensee did not appear at the hearing to defend these charges. The license was not in safekeeping at the time of the hearing, and it appeared to be active. Licensee did not respond to either the Bureau's or the Office of Administrative Law Judge's notices with regard to this matter.

The Court notes that the Licensee was cited for similar violations both in 2008 and in 2009 where they received monetary fines. Based on the prior history, a period of suspension is mandatory.

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 Count No. 2 of this case.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count Nos. 1 and 3 of this case.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

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Therefore, penalties shall be assessed as follows:

Count Nos. 1 and 3 (as merged) - \$1,000.00 fine and two days suspension.
Count No. 2 - \$500.00.

Accordingly, we issue the following

ORDER:

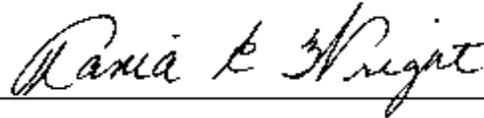
THEREFORE, it is hereby Ordered that Licensee, Walking Miles, LLC, t/a Mellow Mood Bar and Grill, License Number R-AP-SS-EHF-250, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Walking Miles, LLC, t/a Mellow Mood Bar and Grill, License Number R-AP-SS-EHF-250, be suspended for a period of two (2) days. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

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

Dated this 2ND day of December, 2010.



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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