

Mailing Date: NOV 12 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0607
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-408223
v.	:	
	:	LID - 61776
RINEHIMER-PHILLIPS, INC.	:	
T/A ROX 52	:	
52-54 E. MAIN ST.	:	
PLYMOUTH, PA 18651-3017	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-10496	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL STRONG  
LICENSEE: JOHN RINEHIMER, PRO SE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on March 31, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against RINEHIMER-PHILLIPS, INC., License Number R-AP-SS-EHF-10496 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on February 21, 2010, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on February 21, 2010, 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 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 February 21, 2010, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking was prohibited.

The investigation which gave rise to the citation began on February 21, 2010 and was completed on February 26, 2010; and notice of the violation was sent to Licensee by Certified Mail on March 15, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 22, 2010 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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. On February 21, 2010 at 3:05 a.m., an officer of the Bureau drove past the licensed premises. As he drove past he observed through a window that televisions were on. This prompted him to go back and take a look inside through the window (N.T. 12).
2. As the officer looked through the window, he could see the Licensee, Mr. Rinehimer behind the bar with a bartender. He also saw four patrons seated at the bar with drinks in their possession (N.T. 12).
3. At 3:06 a.m. the officer entered the licensed premises and spoke to Mr. Rinehimer (N.T. 13).
4. The officer ascertained that one of the people seated at the bar had a bottle of Miller Lite beer. This individual was the son of the Licensee. The Licensee also identified the girlfriend of Licensee's son who had a vodka and cranberry juice mixed drink in front of her. There was another gentleman who said he was the doorman at the premises. This individual had a draft beer. Also seated at the bar was Licensee's wife who had a vodka, cranberry and orange juice mixed drink in front of her (N.T. 13).
5. The Licensee told the officer that everybody in the licensed premises were employes and they were all just relaxing before going home (N.T. 14).
6. The officer also observed one person behind the bar who was actually working and cleaning up. He also observed another person toward the back of the premises who was also cleaning up (N.T. 14).

7. The officer observed that Licensee, his son and the other gentleman who claimed to be the doorman were all smoking cigarettes. The officer asked the Licensee, Mr. Rinehimer if the premises had a smoking exemption. Rinehimer said that he had just pulled out the ashtrays after everyone had left and they were smoking to relax (N.T. 14).

8. As of February 21, 2010, Licensee did not have a smoking exemption (N.T. 14).

CONCLUSIONS OF LAW:

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

DISCUSSION:

COUNTS 1 AND 2

Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] requires that a Licensee require patrons to vacate that part of the licensed premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of service of alcoholic beverages (2:30 a.m. in the case of restaurant liquor licenses). Also, Section 499(a) of the Liquor Code (supra) prohibits a restaurant licensee from allowing 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.

Section 102 of the Liquor Code [47 P.S. §1-102] defines a patron as follows:

Patron shall mean an individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee, or any person on the licensed premises except those actually engaged in an employment related activity. (Emphasis mine)

In this case, the four individuals seated at the bar, who were in possession of and consuming alcoholic beverages, even though they might normally be considered employees, were, as of that moment patrons as defined by the Liquor Code since they were not engaged in employment activities but were sitting at the bar consuming alcoholic beverages.

Since the individuals described above were clearly on the licensed premises, in possession of alcoholic beverages, and not performing employment related activities, I conclude that Counts 1 and 2 of the citation are sustained.

COUNT 3

The record discloses that three individuals on the licensed premises at the time that the officer was there were smoking. Since Licensee did not have a smoking exemption from the Department of Agriculture, I conclude that Count 3 of the citation is also sustained.

PRIOR RECORD:

Licensee has been licensed since January 6, 2010, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 this case.

Counts 1 and 2 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:

Counts 1 and 2 merged - \$300.00 fine  
Count 3 - \$100.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee RINEHIMER-PHILLIPS, INC., pay a fine of \$400.00 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 26<sup>TH</sup> day of October, 2010.



Daniel T. Flaherty, Jr., J.

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**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**

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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.** 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

Citation No. 10-0607  
Rinehimer-Phillips, Inc.