

Mailing Date: SEP 10 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0646
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-406270
v.	:	
	:	LID - 45318
GIZMO INC	:	
T/A GARY'S DEN	:	
25 E BROADWAY AVE	:	
CLIFTON HEIGHTS PA 19018-2305	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. R-AP-SS-660	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 6, 2010. The citation alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on January 21, February 5 and 6, 2010, by operating the licensed premises without a valid health permit or license, which expired on December 31, 2009.

At the hearing scheduled for July 22, 2010, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the matter was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period January 6 through February 24, 2010, and gave it written notice of the results on March 19, 2010 (N.T. 9-10, Exhibit B-1).
2. A copy of this citation was served on Licensee (N.T. 10-11, Exhibit B-2).
3. A Notice of Hearing was mailed to Licensee on May 26, 2010.

4. On January 21, 2010, a liquor enforcement officer visited the licensed premises and purchased beer. On February 5, 2010, the officer entered the premises at 10:35 p.m. and purchased a malt beverage. There were other customers purchasing and consuming alcoholic beverages from that time until 12:40 a.m. on February 6, 2010, when the officer left the premises (N.T. 5-9).

5. Licensee's health permit had expired on December 31, 2009, and it operated without a permit from that time until at least February 10, 2010 (Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since January 5, 2000, and has had prior violations as follows:

Citation No. 04-0324. \$1,000.00 fine.

1. Minor frequenting. November 23, 2003.
2. Sales to a minor. November 23, 2003.

Citation No. 09-2466. \$1,000.00 fine.

1. Sold alcoholic beverages after license expired. August 25, 2009.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Gizmo, Inc., t/a Gary's Den, License No. R-AP-SS-660, shall pay a fine of four hundred dollars (\$400.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked.

IT IS FURTHER ORDERED that Licensee shall, within 20 days of the mailing date of this order, submit a copy of a valid and current health permit. If Licensee fails to submit the health permit within the time allowed, the penalty in this case will be modified to include a suspension of license, and for that purpose jurisdiction is retained.

Dated this 2ND day of September, 2010.


David L. Shenkle, 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.

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

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Gizmo, Inc.