

Mailing Date: MAR 22 2011

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0660
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-403718
	:	
KENRICH ATHLETIC CLUB	:	
121 S. 19 <sup>TH</sup> ST.	:	LID - 1117
PHILADELPHIA PA 19103-4905	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1927	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**FRANCIS TWARDY  
PRO SE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

Kenrich Athletic Club  
Citation No. 10-0660

This proceeding arises out of a citation that was issued on April 6, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kenrich Athletic Club, License Number C-1927 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, September 29, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Section 13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), in that on November 14, 2009, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited bottom shelf liquor was served for the set price of \$10.00.

The second count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), in that on November 14, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. The investigation of this matter began on November 14, 2009 and ended on March 15, 2010. A notice of violation letter was sent to the licensed premises dated March 22, 2010 by certified mail, return receipt requested. The mailing was signed as received at the licensed premises. A citation issued April 6, 2010 was sent to the licensed premises by certified mail return receipt requested. That mailing was signed as received at the licensed premises (N.T. 1619 and Exhibit B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the premises visiting the premises on November 14, 2009 at approximately 10:15 p.m. The officer was there as the result of an anonymous complaint relative to an open bar at the premises. The officer had a printout from a website that advertised an open bar on Saturday, November 14, 2009 at the licensed premises (N.T. 6 and Exhibit B-3).

3. Specifically, the flyer advertises a two hour open bar from 10:00 p.m. to 12:00 a.m. at a premises named "One" located at 121 South 19<sup>th</sup> Street. The premises is otherwise known as the Kenrich Athletic Club (N.T. 7 and Exhibit B-3).

4. The advertisement also says “Say Kid Rock at the door and get free admission until 1:00 a.m., an open bar from 10:00 p.m. till 12:00 a.m. for ten dollars, \$4 Belvedere mixed drinks, a \$100 bottle of Belvedere vodka and a \$10 reduced cover charge after 1:00 a.m., \$15 after 2:00 a.m.” (N.T. 7 and Exhibit B-3).

5. The officer arrived at the premises on November 14 at 10:15 p.m. along with a second officer from the Bureau. The officers had never been to the premises on any prior occasion. The officer knew the name of the club to be “Club One.” The awning on the side indicated “ONE” (N.T. 9-10).

6. The officer showed his Pennsylvania driver’s license and was granted entry to the premises after paying a ten dollar charge. The cashier indicated that the ten dollars was for the open bar, which included well drinks. The officer was given a neon wristband. The offer did not include top shelf drinks (N.T. 10-11).

7. The cashier indicated the special was from 10:00 p.m. to 12:00 a.m. The second officer was required to pay the same amount and was also given a wristband (N.T. 11-12).

8. The officer approached the bartender and ordered two Tequila sour mixed drinks. The officer observed her pour the drinks; no money was requested (N.T. 12).

9. The officers were not questioned regarding membership nor required to show a membership card. The officers are not members of the club (N.T. 12-13).

10. One officer ordered his first drink at approximately 10:20 p.m. The second order of drinks was made at 10:45 p.m. No money was requested for either set of drinks (N.T. 13-14).

11. There were approximately twenty to twenty-five patrons on the first floor. Some of the patrons were wearing wristbands, others were not (N.T. 14-15).

12. The officer saw cash on the bar, but did not know what drinks the patrons were ordering (N.T. 15).

13. After November 14, 2009, this officer made an additional visit to the premises, as did another Bureau officer. The second Bureau officer made a visit on Friday, February 20, 2010 at 11:50 p.m. for a loudspeaker violation. No violations were found (N.T. 16).

14. Mr. Christopher Twardy indicated that philly2nite.com is not the Kenrich Athletic Club website (N.T. 24).

15. Mr. Christopher Twardy noted that the procedure for entering the premises was to show identification and to swipe that identification. The computer allows them to determine whether or not the person is a member of the club. Members receive a stamp or a wristband. Mr. Twardy states that there is a set price for a fixed number of drinks. He stated that the patrons are given five tickets to purchase alcoholic beverages (N.T. 26).

16. Mr. Twardy indicated that he could not verify if the officers had signed membership applications because the records are in the custody of the Pennsylvania State Police (N.T. 26-27).

17. Mr. Twardy indicates that they do not pay to advertise on philly2nite.com or the city's tonight website (N.T. 28).

18. Mr. Christopher Twardy did indicate that Kenrich Athletic Club is known as "Club One" (N.T. 28).

19. A Bureau's pre-hearing memorandum in this matter was sent out on April 15, 2009. Licensee was represented by Attorney Donald Moser. Licensee filed their own pre-hearing memo, indicating that the charges were moot because of an illegal raid and seizure of a computer on May 2, 2010 (N.T. 30).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On November 14, 2009, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited bottom shelf liquor was served for the set price of \$10.00, in violation of Section 13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3).

Count No. 2 - On November 14, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1).

PRIOR RECORD:

Licensee has been licensed since August 17, 1960, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 07-1376. \$1,500.00 fine.

Kenrich Athletic Club  
Citation No. 10-0660

1. Sales to nonmembers.  
February 17, March 7 and April 1, 2007.
2. Sales between 3:00 a.m. and 7:00 a.m. April 1, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. April 1, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
April 1, 2007.

Citation No. 07-3003. \$3,500.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.  
September 8, 2007.
2. Sales to nonmembers.  
May 18 and September 8, 2007.
3. Sales between 3:00 a.m. and 7:00 a.m. September 8, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time. September 8, 2007.
5. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. September 8, 2007.
6. Sold an unlimited or indefinite amount of alcoholic beverages for a fixed price. May 18, 2007.
7. Improper admission of members.  
May 18, 2007.

Citation No. 08-0930. \$1,000.00 fine and ten days suspension.

1. Used loudspeakers or devices whereby music could be heard outside. March 8, 2008.
2. Interfered with an Enforcement officer in the performance of his duties.  
March 8, 2008.

Citation No. 08-2299. \$3,000.00 fine and one day suspension continuing thereafter until the fine is paid.

1. Used loudspeakers or devices whereby music could be heard outside.  
April 6, 2008.
2. Sales between 3:00 and 7:00 a.m. April 6, 2008
3. Improper admission of members.  
April 6, 2008.

Citation No. 08-3062. \$1,750.00 fine and one day suspension continuing thereafter until the fine is paid.

1. Sales to nonmembers.  
November 8 and 22, 2008.
2. Used loudspeakers or devices whereby music could be heard outside.  
November 8 and 22, 2008.

DISCUSSION:

Licensee was charged with serving nonmembers and now claims that they are unable to determine whether the officers were members or visited the premises on November 14, 2009 because that application and membership information was contained in records, which were confiscated by the Bureau on May 2, 2010.

Licensee was sent a pre-hearing memorandum on or near April 15, 2010 containing the officers' names and a summary of the evidence that would be presented at the hearing. Licensee's response to the memorandum was received on or about May 10, 2010. The memorandum alleged that there was an illegal police raid on May 2, 2010 and that photos from a witness's camera were destroyed by police. No subsequent request for that information was made to the Court. Therefore, Licensee can not now legitimately claim that this information was unavailable or precluded them from offering forth a defense. See Citation No. 10-1196 for a complete analysis.

The Court finds that Licensee was afforded due process, i.e. notice and a full and fair hearing and was in no way precluded from presenting a defense. The officer testified that he signed nothing and was not a member of the club. He saw no computer and showed his identification card/driver's license, but that it was not scanned.

The officers had a flyer which came from the internet, advertising the all you can drink special. Licensee claims to not have paid for that advertisement, however, when the officers went

to the premises, things appeared to be as advertised in that flyer. The officers were given wristbands for ten dollars and told by personnel that they could order drinks, other than top shelf liquor, from 10:00 p.m. to 12:00 a.m., with no additional charge. The officer did, during that time period, order several drinks and was never asked for any monies for the drinks. The officer was not a member of the club and was permitted an unlimited amount of alcohol at a fixed price.

The officer's testimony that the Licensee offered an unlimited or indefinite amount of alcoholic beverages for a fixed price is found to be credible. Licensee indicated that drink tickets were given to patrons during the drink special. However, the Court did not find that evidence credible. The Administrative Law Judge is responsible for determining the credibility of the witness and the weight given to their testimony. *State Correctional Institute v. Robinson*, 561 A.2d 82 (Pa. Cmwlth. 1989).

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- \$350.00.

Count No. 2- \$850.00.

Accordingly, we issue the following

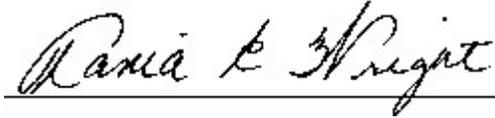
ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kenrich Athletic Club, License Number C-1927, pay a fine of One Thousand Two Hundred Dollars (\$1,200.00) 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.**

Kenrich Athletic Club  
Citation No. 10-0660

Dated this 10<sup>TH</sup> day of MARCH, 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 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:

Kenrich Athletic Club  
Citation No. 10-0660

PLCB - Office of Administrative Law Judge Brandywine Plaza 2221 Paxton Church Road  
Harrisburg, PA 17110-9661

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