

Mailing Date: DEC 09 2010

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0667
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-391881
v.	:	
	:	LID - 2794
POST 162 AMDG CATHOLIC WAR	:	
VETERANS OF PHILADELPHIA PA	:	
9859 BUSTLETON AVE	:	
PHILADELPHIA, PA 19115-2611	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. CC-6179	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 6, 2010. There are seven counts in the citation.

The first count alleges that Licensee violated §13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), on May 24, June 21 and July 18, 2009, by selling and/or serving an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited 12-ounce bottle beers and top shelf liquors were served for the set price of \$15.00.

The second count alleges that Licensee violated §§406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16), on June 21, 2009, by selling, furnishing and/or giving alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The third count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4499(a), on June 21, 2009, by failing 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 fourth count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4499(a), on June 21, 2009, by permitting patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m.

The fifth count alleges that Licensee violated §§401(b) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(b) and 4-406(a)(1), on May 24, June 21, July 18, September 12, November 8, 20, and 21, 2009, by selling alcoholic beverages to nonmembers.

The sixth count alleges that Licensee violated §13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), on May 24, June 21, and July 18, 2009, by discounting the price of alcoholic beverages between 12:00 midnight and 2:00 a.m.

The seventh count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4493(1), on November 20 and 21, 2009, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to two female minors, twenty years of age.

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. On Saturday, May 23, 2009, a liquor enforcement officer arrived in the area of the licensed premises at about 11:55 p.m. The door of the premises opened, so she entered. A doorman said to the officer, "what would you like tonight?" She said, "I'm not sure what you mean." The doorman replied that there was a special going on, \$15 for all you can drink until 1:30 a.m., or she could just pay for drinks as she went along, whatever she preferred. The officer paid \$15 for the special, and a stamp was applied to her hand. She was not asked whether she was a member of the club or whether she had some other reason to be there that evening. She was asked for identification, and showed the doorman her state-issued undercover driver's license, but the request was made jokingly, and the doorman did not examine the license (N.T. 14-17, 69-70).

2. It was about 12:15 a.m. on Sunday, May 24, 2009, by the time the officer settled into a place at the bar and requested a vodka and cranberry juice, which was served to her for no charge. There were six men in a group at the opposite side of the U-shaped bar who were drinking 12-ounce bottles of Heineken beer. The men ordered beer by showing their stamped hands to the bartender, who served it to them without charge (N.T. 17-19).

3. The officer ordered and was served vodka and cranberry again at 12:30 and 1:15 a.m. She was not charged for these drinks. She ordered another one at 1:28, by her watch, but the bartender said it was 1:30 and the special was over. The officer paid \$4 for the last drink and then left the premises (N.T. 19-21).

4. On Sunday, June 21, 2009, the same officer arrived at the licensed premises at about 12:35 a.m. She asked if the special was still going on, and the same doorman who had greeted her before said that it was. The doorman asked her if she was alone or waiting for someone, but he did not ask if the officer was a member of the club. He did ask for identification, and the officer showed her state-issued undercover driver's license, but the doorman did not examine it. She paid \$15 and received the same hand stamp as before (N.T. 21-24, 71-73).

5. At about 12:45 a.m. the officer entered the bar and ordered a vodka and cranberry, which was served to her for no charge. The same thing happened again at 1:10 and 1:25 a.m. At 1:50, 2:25, and 3:25 a.m. the officer ordered the same drink and paid \$4 for each. Until 1:25 a.m. there were at least 20 patrons ordering various drinks and receiving them for no charge. Between 1:30 a.m. and 3:55 a.m., when the officer left the premises, sales and service of alcoholic beverages continued, but patrons paid for drinks when they were served (N.T. 25-28).

6. On July 18, 2009, the same officer arrived at the licensed premises at about 1:00 a.m. The cashier was not in her usual place, but in a little nook. She looked at the officer funny when the officer wanted to pay \$15 for unlimited drinks until 1:30. The officer said she understood, but wanted the special anyway. The officer was not asked for identification or if she was a member of the club. She paid \$15 and received the hand stamp, but then noticed there was a clipboard next to the cashier which she had not seen before, which looked like it contained lines for people to sign. However, the officer was not asked to sign anything and had not done so on any of her visits to the premises to this date. She was served vodka and cranberry for no charge at 1:12 and 1:25 a.m. She ordered the same again at 1:55, 2:30, and 2:55 a.m., but paid \$4 for each of these drinks (N.T. 28-33).

7. When the officer left the premises at 3:00 a.m. there were still about 75 patrons remaining, in possession of alcoholic beverages (N.T. 34).

8. On September 12, 2009, the same officer arrived at the licensed premises at about 1:00 a.m. She paid \$5 to enter, and ordered a vodka and cranberry, for which she paid \$4. She ordered and paid for three more of the same drink during that visit, the last one at 2:55 a.m. She was not asked if she was a member or there for another reason, and she was not required to sign in. She was asked for identification and showed her state-issued undercover driver's license (N.T. 35-39, 82).

9. On November 8, 2009, the same officer arrived at the licensed premises at about 2:00 a.m. She paid \$5 to enter, and ordered a vodka and cranberry, for which she paid \$6. She ordered and paid for two more of the same drink during that visit, the last one at 2:45 a.m. She was not

asked for identification or if she was a member or there for another reason, and she was not required to sign in. When the officer left at 3:00 a.m. there were at least 60 patrons still drinking and purchasing alcoholic beverages (N.T. 39-42).

10. On November 20, 2009, the same officer arrived at the licensed premises at about midnight. She paid \$5 to enter, and saw that other patrons were signing a guestbook, the paper she had seen on the clipboard previously. She asked, "do I need to sign the book?" Door personnel "were like, oh yeah, sign the guestbook" as the officer described it (N.T. 42-43).

11. The paper the officer signed has this caption, followed by boxes in which people have written names (N.T. 44, Exhibit B-4):

Catholic War Veterans Post 162

GUEST LIST 11/20

BY SIGNING THIS I ACKNOWLEDGE THAT I AM A GUEST OF

MR FUNKY ENT

NAME

NAME

12. The guest list exhibit, which was obtained by the Bureau from Licensee, includes four sheets labeled as above and five sheets labeled as above except for the date, 11/21, and "Skyline Ent" in place of "Mr Funky Ent" (N.T. 46-47, Exhibit B-4).

13. On November 21, the officer ordered vodka and cranberry at 12:10, 12:15, 12:20, and 12:25 a.m. and paid six dollars for each drink served. Her last purchase was at 12:35 a.m., when she noticed a group of young people being served alcoholic beverages. The officer then left the premises and notified a detail of liquor enforcement officers of her observations (N.T. 51-56).

14. The investigating officer has never been a member of this club. During each of the visits described above, the officer did not see any service of food. There was a table with chafing dishes which could have held a hot buffet, but the equipment was clean and not in use at the times the officer visited the premises. During each of these visits, the officer did not see any signs indicating that the premises was being used for an event or party. There was always a disc jockey during the officer's visits, but she never heard him announce anything related to a celebration (N.T. 58-61).

15. On the evening of November 20, 2009, prior to midnight, a woman whose birth date was August 6, 1989, entered the licensed premises. When her age was questioned she produced the Pennsylvania identification card of a twenty-five year old woman whom she does

not resemble. She was not asked if she was a member or attending an event, although she did sign a guest list. She went to the bar and purchased beer for herself. She did not see a buffet (N.T. 9098).

16. On the evening of November 20, 2009, at about 11:00 p.m., a woman whose birth date was December 15, 1988, entered the licensed premises. When her age was questioned she produced the Florida identification card of a twenty-four year old woman whom she does not resemble. She was not asked if she was a member (she was not) or attending an event, although she did sign a guest list. She went to the bar and purchased rum and coke for herself. She did not have food (N.T. 99-104).

CONCLUSIONS OF LAW:

The weight of the evidence shows that the events of May 24, June 21, July 18, September 12, November 8, 20, and 21, 2009, described in the findings of fact, were not “catered events” within the meaning of 40 Pa. Code §5.83(a) because there was no service of food.

Therefore, Licensee’s defense that a catered event was being conducted is insufficiently proven to avoid a finding of liability on the first and fifth counts. As to each of the numbered counts of the citation, I find that:

1. Licensee violated §13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a)(3), on May 24, June 21 and July 18, 2009, by serving an unlimited amount of alcoholic beverages for a fixed price, in that unlimited 12-ounce bottled beer and top shelf liquors were served for the set price of \$15.00.

2. Licensee violated §§406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16), on June 21, 2009, by selling alcoholic beverages between 3:00 a.m. and 7:00 a.m.

3. Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on June 21, 2009, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than 3:30 a.m.

4. Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on June 21, 2009, by permitting patrons to possess alcoholic beverages in that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m.

5. Licensee violated §§401(b) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(b) and 4-406(a)(1), on May 24, June 21, July 18, September 12, November 8, 20, and 21, 2009, by selling alcoholic beverages to nonmembers.

6. Licensee violated §13.102(a) of the Liquor Control Board Regulations, 40 Pa. Code §13.102(a), on May 24, June 21, and July 18, 2009, by discounting the price of alcoholic beverages between 12:00 midnight and 2:00 a.m.

7. Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on November 20 and 21, 2009, by selling alcoholic beverages to two female minors, twenty years of age.

DISCUSSION:

Licensee presented evidence which would have supported a conclusion that food was available on the dates of the officer's visits, but I found it less credible than the evidence presented by the government.

As the Board noted in its opinion in *Mad River Manayunk*, Citation No. 09-0760, it is Licensee's burden to prove four elements to establish the exception, applicable to the first and fifth counts, known as a "catered event":

1. Food was provided as part of the event;
2. The event was arranged at least 24 hours in advance;
3. The event was organized and paid for by someone other than the licensee; and
4. The agreement identified the approximate number of attendees.

In this case Licensee's evidence in support of the second, third and fourth elements was not controverted on the record. That is, Licensee rented its premises to an outside party who paid for the privilege. Licensee and a rotating cast of disc jockeys signed agreements dated as of the correct time and date which sufficiently brought the event within the legal definition.

The only stumbling block for Licensee is my finding that there was no food being served in the premises. I make this finding because there is substantial evidence of record to support it; i.e., the officer's testimony. Licensee's evidence did not possess, in my mind, the force and authenticity needed to overcome the government's case.

PRIOR RECORD:

Licensee has been licensed since January 14, 1988, and has had no prior violations.

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 the first, third, fourth, fifth and sixth counts, any fine must be in the \$50.00 to 1,000.00 range. For violations of the type found in the second count any fine must be in the \$1,000.00 to \$5,000.00 range.

For violations of the type found in the seventh count any fine must usually be in the \$1,000.00 to \$5,000.00 range. However, Licensee has been continuously R.A.M.P. – certified

since March 20, 2008, and has no record of previous violations; therefore, the range of fines for the seventh count is \$50.00 to 1,000.00.

Since this is Licensee's first violation of 47 P.S. §4-493(1) as it relates to sales to minors, 47 P.S. §4-471(d) requires that I order Licensee to remain in compliance with the requirements of 47 P.S. §4-471.1 for a period of one year. Penalties are assessed as follows:

Count No. 1 – a fine of \$350.00.

Count No. 2 – a fine of \$1,000.00.

Count No. 3 – a fine of \$250.00.

Count No. 4 – a fine of \$250.00.

Count No. 5 – a fine of \$250.00.

Count No. 6 – a fine of \$450.00.

Count No. 7 – a fine of \$500.00 and mandatory R.A.M.P. compliance for 1 year.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Post 162 A.M.D.G. Catholic War Veterans of Philadelphia, PA, License No. CC-6179, shall pay a fine of THREE THOUSAND FIFTY (\$3,050.00) 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. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee shall continue to comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management for a period of one year from the mailing date of this adjudication.

Failure to comply with this order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d).

Dated this 23RD day of November, 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 Citation

No. 10-0667

Post 162 A.M.D.G. Catholic War Veterans of Philadelphia, PA