

Mailing Date: NOV 17 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0972
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-405823
v.	:	
	:	LID - 24888
MCDavid ASSOCIATES INC	:	
T/A JACK'S FIREHOUSE	:	
2128-30-32 FAIRMOUNT AVE	:	
PHILADELPHIA PA 19130	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-11078	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Colin M. Houston, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 11, 2010. There are two counts in the citation.

The first count alleges that Licensee violated §§406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on February 13 and April 10, 2010, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The second count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on April 10, 2010, 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.

A hearing was held on August 25, 2010, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On February 13, 2010, two liquor enforcement officers entered the licensed premises at 1:25 a.m. One of the officers ordered beer for both of them. That officer purchased another beer prior to 2:00 a.m. At or about that time, the bartender announced that there would be no more service of alcoholic beverages, and the remaining patrons did not order any. At about 2:15 a.m., three men and two women entered the premises. The men ordered beer and the women ordered Vanilla Stolichnaya brand vodka and coke. These drinks were served and paid for (N.T. 6-8, 15).

2. On March 13, 2010, a liquor enforcement officer visited the licensed premises at 2:30 a.m. and observed no violations. On April 9, 2010, the officer visited again but found the premises closed. On April 10, 2010, the officers who had visited on February 13 entered the premises at about 1:10 a.m. and one of them ordered beer. At about 2:15 a.m. he purchased another beer for himself and one for the other officer. These drinks were served and paid for (N.T. 8-11).

3. When the officers left the premises at about 2:25 a.m. on April 10, 2010, there were three patrons still drinking their drinks. Through large glass windows the officers watched these patrons from outside, and saw them get up and leave at about 2:40 a.m. (N.T. 11-12).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since January 30, 1990, 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 Count No. 1 any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in Count No. 2 any fine must be in the \$50.00 to \$1,000.00 range.

Licensee presented detailed testimony from its manager, who impressed me as conscientious and thorough. The manager's evidence did not contradict the Bureau's to the degree which would cause me to question the weight I should give it.

I am persuaded that this establishment is in general well-managed, and this first "blot" on its record is not likely to be repeated, as the restaurant now closes at 1:00 a.m. Therefore I will merge the two counts and impose the minimum penalty of a \$1,000.00 fine.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, McDavid Associates, Inc., t/a Jack's Firehouse, License No. R-AP-SS-11078, shall pay a fine of one thousand dollars (\$1,000.00) 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.

Dated this 25TH day of October, 2010.



David L. Shenle, 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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McDavid Associates, Inc.