

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. 10-1065
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-411292
v.	:	
	:	LID - 49515
LA QUINTA INC	:	
4602-4604 N 5 th ST	:	
PHILADELPHIA PA 19140-1409	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-978	:	

JUDGE SHENKLE
BLCE COUNSEL: James E. Dailey, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 25, 2010. There are four counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 10, 11, 2010 and three other unknown dates in April 2010, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

The second count alleges that Licensee violated §493(14) of the Liquor Code, 47 P.S. §4-493(14), on April 1, 3, 10, 11, 2010, and three other unknown dates in April, 2010, by permitting one male minor, twenty years of age, to frequent its licensed premises.

The third count alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), by failing to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding April 11, 2010.

The fourth count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on April 11, 2010, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

At the hearing scheduled for August 31, 2010, in Plymouth Meeting, Pennsylvania, there was no appearance by for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period April 11 through April 20, 2010, and sent it written notice of the results on May 7, 2010 (N.T. 10-11, Exhibit B-1).

2. A copy of this citation was mailed to Licensee on May 25, 2010 (N.T. 10-11, Ex. B-2).

3. A Notice of Hearing was mailed to Licensee on July 16, 2010.

4. A liquor enforcement officer arrived in the area of the licensed premises at about 12:40 a.m. on April 11, 2010, and heard music emanating from it at a distance of 75 feet. He entered the premises and saw that the source of the music was loudspeakers inside (N.T. 4-7).

5. The officer identified himself to the manager and asked to see Licensee's business records. The records were incomplete, in that some beer and liquor invoices for the previous two years were at an accountant's office (N.T. 7-8).

6. A man with a youthful appearance was drinking from a bottle of beer. A liquor enforcement officer asked him for identification. Based on the identification presented, as confirmed by records of the Pennsylvania Department of Transportation, and the appearance of the person as compared with the photograph in PennDOT's records, it may be legally concluded that this man's date of birth was August 31, 1989 (N. T. 9-14, Exhibit B-3).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 11, 2010, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

The evidence did not prove that Licensee violated 47 P.S. §4-493(14).

Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), by failing to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding April 11, 2010.

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on April 11, 2010, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

PRIOR RECORD:

Licensee has been licensed since July 17, 2002, and has had prior violations as follows:

Citation No. 07-1338 & 07-2023 (consolidated). \$2,000.00 fine.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m. May 20, June 24 and July 22, 2007.
2. Failed to require patrons to vacate the premises by the required time. May 20, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. May 20, 2007.
4. Operated without a valid health permit or license. April 9, 21 and May 20, 2007.
5. Loudspeakers could be heard outside. June 24 and July 22, 2007.

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 and second counts, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in the third and fourth counts, any fine must be in the \$50.00 to \$1,000.00 range. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances. Penalties are assessed as follows:

- Count No. 1 – a fine of \$1,250.00 plus mandatory R.A.M.P. – certification.
- Count No. 2 – dismissed.
- Count No. 3 – a fine of \$100.00.
- Count No. 4 – a fine of \$150.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, La Quinta, Inc., License No. R-AP-SS-OPS-978, shall pay a fine of one thousand five hundred dollars (\$1,500.00) 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 comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; www.lcb.state.pa.us) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days of the mailing date of this adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with 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 25TH day of October, 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. 10-1065
La Quinta, Inc.