

Mailing Date: MAR 09 2011

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1171
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-377153
v.	:	
	:	LID - 57893
SOLO NIGHTCLUB LLC	:	
520 N CHRISTOPHER COLUMBUS BLVD	:	
PHILADELPHIA PA 19123	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-8363	:	

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

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 8, 2010. The citation alleges that Licensee violated §§471 and 611 of the Liquor Code, 47 P.S. §§4-471 and 6-611 on April 8, 2010, on the basis that the Court of Common Pleas of Philadelphia County on that date adjudged the licensed establishment to be a common nuisance and a public nuisance at law, and permanently enjoined it from using the licensed premises or transferring the liquor license for a period of one year, and also required that the premises not be occupied or used during that time for any other purpose unless approved by further order of court.

At the hearing scheduled for January 25, 2010, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period July 1, 2008, through May 14, 2010, and sent written notice of the results to Licensee on May 19, 2010 (N.T. 9, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on June 8, 2010 (N.T. 10-12, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on December 10, 2010.

4. The Public Nuisance Task Force, a part of the Philadelphia District Attorney's office, became aware of numerous incidents at the licensed premises, including violence, shootings, fights and other disturbances such as causing crowds to block traffic. A large police presence, including officers working overtime, has been required at the premises because of these problems. As a result, the citywide nuisance bar prosecutor filed an action against Licensee under §611 of the Liquor Code, 47 P.S. §6-611, in November, 2008 (N.T. 14-16).

5. On April 8, 2010, the Honorable Idee C. Fox, Judge of the Court of Common Pleas of Philadelphia County, after full hearing, entered an order enjoining Licensee from operating "Solo Nightclub" or any other liquor-licensed establishment under any name at 520 N. Delaware Avenue, Philadelphia, PA, for a period of one year. The order required Licensee to surrender this liquor license to the PLCB for that period (N.T. 8, Exhibit B-3).

6. Records of the PLCB indicate that this license expired on October 31, 2008, and that it was received by the Board for safekeeping on May 7, 2009.

#### CONCLUSIONS OF LAW:

Licensee violated §§471 and 611 of the Liquor Code, 47 P.S. §§4-471 and 6-611 on April 8, 2010, on the basis that the Court of Common Pleas of Philadelphia County on that date adjudged the licensed establishment to be a public nuisance.

#### DISCUSSION:

It is my understanding, based on the representations of counsel for the Bureau, that the PLCB refused to renew this license, that an appeal was taken from this decision to the Court of Common Pleas by Licensee's landlord, and that this appeal is still pending.

The Bureau requested that I revoke this license, "based on the fact that this premises was found to be a public nuisance. You heard testimony . . . that there were shootings." (N.T. 22).

Section 4-471 of the Liquor Code specifies certain violations for which any fine must be in the \$1,000.00 to \$5,000.00 range, and "found to be a public nuisance pursuant to section 611" is one of them. My fellow ALJ's have decided only a handful of cases involving this violation:

In *Ange-Co, Incorporated*, Citation No. 99-1765, the Honorable Daniel T. Flaherty, Jr., sustained a charge based on a §611 injunction. The licensee had had eleven prior violations. Licensee's officer had entered into an agreement with the Board "that neither Licensee's president nor any member of his family will ever be permitted to own a liquor license in Pennsylvania again." Under these circumstances, the penalty for this count was a deferred one-day suspension.

In *Sea Seas, Inc.*, Citation No. 00-0623, Judge Flaherty sustained the charge and ordered the licensee to pay a fine of \$1,000 and serve a one-day suspension. The licensee had eight prior violations, and the suspension was mandatory. The fine was not paid within the time allowed, so two additional days were added to the penalty. When the licensee failed to respond to that order, Judge Flaherty revoked the license.

In *Chu's Lounge, Inc.*, Citation No. 00-1011, Judge Flaherty sustained the charge and ordered the licensee to serve a one-day suspension, which was mandatory under the law then in effect. The judgment of the common pleas court that the licensee was a nuisance was based in part on conduct found by the Honorable Felix Thau previously to be a violation, for which the licensee was fined. This licensee had only two prior violations. Judge Flaherty observed:

It seems to me that the bringing of this action and the imposition of a penalty in this case is both onerous and redundant. Licensee has been charged in Citation No. 00-0569 with the activity which underlies the equity action in this case. In Citation No. 00-0569 Licensee paid a fine of \$1,000.00. Licensee was also punished for the activity in question by the equity action and the decree by the Luzerne County Court which closed the licensed premises for one year. This is quite obviously a tremendous financial burden on Licensee. This citation produces a third bite at the apple again punishing Licensee for the same conduct produced by the previous citation and by the equity action of the Court. For that reason, I impose the least onerous penalty that I can fashion which shall be suspension of license for a period of one day.

After this adjudication was entered, the Board refused to renew the license. Reasoning that the license no longer existed, Judge Flaherty entered a supplementary order revoking it.

In *Desi's Pizza, Inc.*, Citation No. 01-0786, Judge Thau sustained a count of the citation based on a §611 injunction. The licensee had five prior violations. Judge Thau observed:

The Bureau recommends that I revoke the license for all charges I sustain. It seems that no other action is appropriate. Should I impose suspensions, it is not likely Licensee will ever serve them. Should I include fines, I doubt whether Licensee is sufficiently financially solid to pay the fines. Finally, Licensee's prior citation history, at a minimum, demonstrates Licensee is incapable of operating a licensed business. Accordingly, I revoke the license.

In *Tony & Mary's Tavern, Inc.*, Citation No. 06-0677, Judge Flaherty sustained the citation, based solely on a §611 injunction. The licensee had two prior violations. The penalty was the minimum, a \$1,000.00 fine.

I am not persuaded, based on the thinking of my colleagues outlined above, that immediate revocation of this license is the appropriate remedy. I do not think it is legitimate for me to consider, as an aggravating circumstance, the evidence presented to Judge Fox as if I had heard it myself. The only indication I can see in the legislative landscape of an intention that an injunction under §611 is a separate basis for a penalty is the third sentence of 47 P.S. §4-471(b).

I feel obliged to impose a penalty on the basis of that sentence, but I do not see an intention on the part of the legislature to authorize license revocation as an automatic consequence of a §611 injunction. If this had been so, §611 would have provided for license revocation rather than a oneyear maximum injunction. I agree with the comments of Judge Flaherty reproduced above.

It may well be, as Judge Thau observed, that the ultimate result of this adjudication will be license revocation for failure to pay a fine. If it is true, as the circumstances seem to indicate, that

Licensee's ownership has walked away from this license, then this result will follow in time without harm to the Commonwealth's interests.

PRIOR RECORD:

Licensee has been licensed since July 11, 2007, and has had prior violations as follows:

Citation No. 08-1238. \$250.00 fine.

1. Failed to adhere to the conditions of an agreement with the Board placing additional restrictions on the license. October 10, 2007, through May 20, 2008.

Citation No. 09-0754. \$500.00 fine. License suspended one day for late payment.

1. Failed to adhere to the conditions of an agreement with the Board placing additional restrictions on the license. March 6, 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 \$1,000.00 to \$5,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Solo Nightclub, LLC, License No. RAP-SS-8363, 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 22<sup>ND</sup> \_\_\_\_\_ day of February, 2011.



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

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**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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Solo Nightclub, LLC