

Mailing Date: JAN 31 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1300
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-403397
v.	:	
	:	LID - 53541
CH & JI INC	:	
6525 RISING SUN AVE	:	
PHILADELPHIA PA 19111-5246	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-OPS-873	:	

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 June 29, 2010. There are three counts in the citation.

The first count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(2) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(2), on November 12, December 9, 2009, January 31 March 27 and April 17, 2010, by permitting smoking in a public place where smoking is prohibited.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(1) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(1), on November 12, December 9, 2009, January 31, March 27 and April 17, 2010, by failing to post signage as required.

The third count alleges that Licensee violated §493(12) of the Liquor Code, 47 P.S. §4-493(12), on May 22, 2010, by failing to keep records on the licensed premises.

At the hearing scheduled for December 16, 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 November 5, 2009, through May 22, 2010, and sent it written notice of the results on June 7, 2010 (N.T. 11-12, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on June 29, 2010 (N.T. 12, Exhibit B-2).

3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on October 29, 2010.

4. On November 12, 2009, a liquor enforcement officer visited the licensed premises at 9:40 p.m. There were about six patrons and a bartender. After the officer was in the premises for about ten minutes, the bartender began to smoke a cigarette. Patrons were also seen to smoke, and there were ashtrays provided for them. There were no "no smoking" signs posted (N.T. 4-6).

5. The officer visited the premises again on December 9, 2009, January 31, March 27 and April 17, 2010, and made the same observations he had on November 12. Licensee was not exempt from the Clean Indoor Air Act on these dates (N.T. 6-12, Exhibit B-3).

6. On May 22, 2010, a liquor enforcement officer inspected the licensed premises and found that there were no beer or liquor invoices kept available for review (N.T. 13-14).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since September 13, 2004, and has had seven prior violations:

Citation No. 05-2443. 1 day suspension.

1. Sales on Sunday after 2:00 a.m. October 6, 2005.

Citation No. 06-2035. \$450.00 fine.

1. Failed to keep records on the licensed premises. July 25, 2006.
2. Failed to maintain coil cleaning records. July 25, 2006.
3. Not a *bona fide* restaurant (insufficient food). July 25, 2006.

Citation No. 07-2923. \$400.00 fine and 3 days suspension, plus 1 day for late payment.

1. Sales between 2:00 a.m. and 7:00 a.m. October 6 and 27, 2007.
2. Failed to vacate the premises by the required time. October 6 and 27, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. October 6 and 27, 2007.
4. Permitted patrons to enter the premises between 2:30 a.m. and 7:00 a.m. without an extended hours food permit. October 6 and 27, 2007.

Citation No. 08-1741X. \$100.00 fine.

1. Bad checks for malt or brewed beverages. May 21, 2008.

Citation No. 08-2767. \$100.00 fine.

1. Failed to post a notice of suspension. October 22, 2008.

Citation No. 09-0189X. \$200.00 fine.

1. Bad checks for malt or brewed beverages. December 4, 2008.

Citation No. 09-0745X. \$250.00 fine.

1. Bad checks for malt or brewed beverages. December 10, 2008.

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 \$50.00 to \$1,000.00 range, or both, for violations of this type. Penalties are assess as follows:

- Count 1 – a fine of \$200.00.
- Count 2 – a fine of \$100.00.
- Count 2 – a fine of \$200.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Ch & JI, Inc., License No. R-SS-OPS-873, shall pay a fine of five hundred dollars (\$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.

Dated this 20TH day of January, 2011.



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