

Mailing Date: AUG 03 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1576
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-415078
	:	
CHILL SPOT LOUNGE INC.	:	
2837-39 RIDGE AVE.	:	LID - 58316
PHILADELPHIA PA 19121-5214	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-4116	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

LORI J. HAHN MASLIN, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 3, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Chill Spot Lounge, Inc., License Number R-AP-SS-4116 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, February 17, 2011, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12), in that on June 18 and 30, 2010, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement visited the licensed premises on Friday, June 18, 2010 at approximately 11:00 p.m. He was accompanied by an officer from the Bureau of Enforcement and various other members of the Task Force and Operation Pressure Point (N.T. 5-7).

2. When the officer entered the premises, he noted that the bar was open and operating. He identified himself to Charles Burdine and told him that he would be conducting a routine inspection. During the course of the inspection, the officer noted that the premises did not have any records in the nature of liquor and beer invoices on the premises. Also, there were no cleaning coil records (N.T. 8).

3. Mr. Burdine indicated to the officer that he did not know where the records were located (N.T. 9).

4. The officer found no other violations at that time. They departed the premises at approximately 11:30 p.m. (N.T. 9).

5. On Monday, June 28, 2010, the officer contacted Mr. Burdine to set up an appointment so that he could come back to the premises and check the records (N.T. 9).

6. The two agreed that June 30, 2010 would be a good day for him to return and check the records. He explained to Mr. Burdine which records he was coming back to check. On Monday, June 30, 2010 at approximately 5:00 p.m., the officer arrived at the premises and Mr. Burdine explained that he did not have the operating records and that they were at his accountant's office. Mr. Burdine did have two coil cleaning records (N.T. 10).

7. The officer advised him that he was to have coil cleaning records for every seven days. Mr. Burdine explained to him that the draft system was newly installed. Therefore, the officer gave him a warning with regards to those records (N.T. 10-11).

8. The officer did not look for records on the premises in that Mr. Burdine told him that the records were not there (N.T. 11-12).

9. Mr. Burdine purported to be the person in charge (N.T. 12).

10. During the routine inspection, there were approximately ten representatives from various agencies at the licensed premises (N.T. 12).

11. Mr. Burdine is the manager of the licensed premises. However, the Board approved manager is Cherise Hawkins (N.T. 19).

12. Mr. Burdine is not aware of any records in the basement of the premises (N.T. 20).

13. Mr. Burdine indicated that he showed the officers all of the licenses which were requested (N.T. 20).

14. According to Mr. Burdine, the records were in the basement at the time of the officer's visit. He was unaware of that fact (N.T. 22).

15. Mr. Burdine brought records to Court. The operation of the business ran from 2010 up to January of 2011 (N.T. 22-23).

16. Mr. Burdine indicated that a pipe burst in the basement and storage area and most of the records had gotten wet. He indicated that he did have the records with him in a trash bag in the car. They were no longer wet, but there was mildew on them (N.T. 23).

17. Mr. Burdine indicated that he did not go to the basement to see if the records were there and that he did not have a key to the basement (N.T. 28).

18. He indicated that during the time of the raid, Mr. Hankins, the Board approved manager was handcuffed outside the premises (N.T. 27-28).

19. Sharif Hankins is the Board approved manager for the licensed premises. He was at the premises on June 18 at the time of the Operation Pressure Point investigation. Mr. Hankins testified that at the time of the raid, he was in possession of a firearm which he is licensed to carry, but was nevertheless cuffed and taken outside and away from the premises (N.T. 33-34).

20. Mr. Hankins had keys to the basement (N.T. 34-35).

21. Mr. Hankins also indicated that a pipe had broken in the basement at the end of July (N.T. 36).

22. The Liquor Board approved the application for renewal without a renewal hearing, but did point out issues of concern at the bar (N.T. 39).

CONCLUSIONS OF LAW:

On June 18 and 30, 2010, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises, in violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12).

PRIOR RECORD:

Licensee has been licensed since January 29, 2008, and has a record of prior violations as follows:

Citation No. 09-1096. \$1,000.00 fine.

1. Sales after your license expired and had not been renewed and/or validated.
April 10, 2009.

DISCUSSION:

It is conceivable that there were records on the premises on June 18, 2010, which the Licensee was prevented from obtaining because the Board approved manager was being detained outside the premises. This excuse is not valid for the June 30, 2010 visit to the premises. At the point Mr. Burdine arranged for the officer to come and look at the records, the records should have been available.

In addition, the Licensee has indicated that there was a leak in the basement which prevented Licensee from presenting all of the records. However, it is noted that Licensee has retained a substantial number of records and appear to now be in compliance with record keeping requirements.

A review of the prior history indicates that there is one prior violation for sales after the license expired in 2009. After consideration of all the circumstances, a moderate monetary penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Chill Spot Lounge, Inc., License Number R-AP-SS-4116, pay a fine of One Hundred Dollars (\$100.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Chill Spot Lounge, Inc.
Citation No. 10-1576

Jurisdiction of this matter is retained.

Dated this 29TH day of JULY, 2011.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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Chill Spot Lounge, Inc.