

Mailing Date: FEB 01 2011

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 10-1633
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-413631
 :
 v. :
 : LID - 59764
 :
 SMBW INC :
5642-44 BOYER ST :
PHILADELPHIA PA 19138-1733 :
 :
PHILADELPHIA COUNTY :
LICENSE NO. R-AP-SS-1162 :

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 August 10, 2010. There are two counts in the citation.

The first count alleges that Licensee violated §§491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1) and 4-492(2), and 4-493(16) on June 14, 17 and July 13, 2010, by selling, furnishing and/or giving alcoholic beverages during a time when its Liquor License was suspended at Citation No. 09-1503.

The second count alleges that Licensee violated §15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), on June 14, 17, 28 and July 13, 2010, by failing to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the premises, a Notice of Suspension.

At the hearing scheduled for December 14, 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 May 26 through July 13, 2010, and sent it written notice of the results on July 22, 2010 (N.T. 13-15, Exhibit B-1).

2. A copy of this citation was mailed to Licensee on August 10, 2010 (N.T. 14-15, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on October 28, 2010.
4. A third supplemental order pertaining to Citation No. 09-1503, which was mailed on May 24, 2010, provided:

THEREFORE, it is hereby ORDERED that the Restaurant Liquor License of SMBW, Inc., License No. R-AP-1162, shall be suspended indefinitely for at least one day, beginning at 7:00 a.m. on Monday, June 14, 2010, and continuing thereafter until further order.

Licensee is directed on Monday, June 14, 2010, at 7:00 a.m. to place the enclosed notice of suspension placard in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside, and to remove the license from the wall and secure it safely elsewhere.

5. On June 14, 2010, a liquor enforcement officer entered the licensed premises at 1:35 p.m. and found it open for business. The officer purchased an alcoholic beverage, and inspected the entire premises for the presence of a suspension placard. None was found (N.T. 6-7).

6. On June 17, 2010, a liquor enforcement officer entered the licensed premises at 9:40 p.m. and found it open for business. The officer purchased an alcoholic beverage, and inspected the entire premises for the presence of a suspension placard. None was found (N.T. 7-9).

7. On June 28, 2010, liquor enforcement officers inspected the licensed premises, which was open for business. There was a current health permit for the premises, although it was not displayed at the time of the inspection. There were no other violations observed (N.T. 10-12).

8. The suspension referred to in paragraph 4 above remained in effect until 1:00 p.m. on July 15, 2010.

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since April 2, 2008, and has had prior violations, as follows:

Citation No. 09-1503. \$800 fine and verification of compliance. License suspended from June 14 to July 15, 2010, for noncompliance with ALJ orders.

1. Operated without a valid health permit or license. May 2, 2009.
2. Not a *bona fide* restaurant (insufficient food, eating utensils, dishes and glasses). May 2, 2009.
3. Loudspeakers could be heard outside. May 23 and 24, 2009.

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 count any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in the second count any fine must be in the \$50.00 to \$1,000.00 range. Penalties are assessed as follows:

Count 1 – a fine of \$1,000.00.
Count 2 – a fine of \$200.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, SMBW, Inc., License No. R-AP-SS-1162, shall pay a fine of one thousand two hundred dollars (\$1,200.00) 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 21ST day of January, 2011.



David L. Shenkle, J.

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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