

Mailing Date: AUG 11 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2205
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-415923
	:	
THE UNITED INDEPENDENT	:	
ITALIAN AMERICAN CLUB OF THE	:	LID - 37932
CITY OF PHILADELPHIA	:	
7215 TORRESDALE AVE.	:	
TACONY	:	
PHILADELPHIA PA 19135-1314	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1902	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EDWARD B. McHUGH, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 19, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against The United Independent Italian American Club of the City of Philadelphia, License Number C-1902 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, February 3, 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 contains four counts.

The first count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), in that on August 8 and September 5, 2010, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The second count charges Licensee with violation of Sections 406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16), in that on August 8 and September 5, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The third charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on September 5, 2010, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The fourth count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), in that on September 5, 2010, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

COUNT NOS. 1, 2, 3 AND 4

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises during July and August of 2010 (N.T. 5-6).
2. On August 8, 2010 at approximately 2:35 a.m., the officer made his first visit to the premises. The officer was accompanied by another officer from the Bureau of Enforcement. This officer kept time with his cell phone using the AT&T network throughout his investigation (N.T. 6-7).
3. The officer noted that the area outside was primarily residential, but contained some businesses. There was a gas station across the street. When he entered the premises, he noted that there was a door greeter who requested the officer's identification (N.T. 8-10).

4. The officer was familiar with the premises and had visited during a prior investigation (N.T. 10).

5. Both officers presented fictitious Pennsylvania Driver's Licenses. The officers' own photo appears on the fictitious licenses (N.T. 11).

6. The officers were told that it be five dollars for each of them to enter the premises. The officer gave him money for himself and the second officer (N.T. 12).

7. The officers were not required to submit any membership information. They were not required to sign anything. They were not given a stamp or any other identifying marks (N.T. 12).

8. The officers noted that there was approximately thirty people inside the premises. They were drinking and talking. Music was played. There was no band on the premises (N.T. 13-14).

9. The officers stood near the bar. They ordered two twelve ounce bottles of Coors Lite beer from a bartender who wore a dark colored shirt with the word "Yik Yak" above the left side of his chest, similar to that worn by the doorman (N.T. 14).

10. The officers were not challenged as to membership. The bartender served beverages which cost \$9.00. The officer gave him \$10.00 (N.T. 14).

11. The officers went towards the back of the premises across from the jukebox area and stood on the left back wall (N.T. 14).

12. At approximately 2:40 a.m., the officers ordered drinks. At approximately 3:05 a.m., the lights were turned on and the bartender announced last call. At 3:06 a.m., one of the officers approached the bar and waited for the bartender to take his order. Two male bartenders were serving people alcoholic beverages and making change (NT. 15).

13. The officer ordered and was served a twelve ounce Coors Lite beer at approximately 3:08 a.m. He took the beer and backed away from the bar going towards the other Enforcement officer who was still on the premises. The officer was charged \$4.50 for the beer. When the officer ordered and received the beer at 3:08 a.m., the cash register was still operational (N.T. 15-16).

14. While waiting for his beer, the officer noted the bartenders serving other patrons alcoholic beverages (N.T. 16-17).

15. The officers departed the premises at 3:20 a.m. The investigating officer is not now nor has ever been a member of the club (N.T. 18).

16. On September 5, 2010, the officer visited the premises, alone. He kept time again by his cell phone. The officer parked the car approximately 150 feet south of the premises on Torredale Avenue. When he departed his vehicle, he heard loud music and hip hop style being played at a distance of approximately forty feet from the premises (N.T. 17-18).

17. When he approached the door, he noted that there were two females and one male in front of him that were also entering. They were greeted by a person in a dark shirt with the words "Yik Yak" on it. They were holding the door open for a group that was coming up the steps in front of him (N.T. 19).

18. The officer paid \$5.00 to the person holding the door, after presenting his identification (N.T. 19-20).

19. The officer was not questioned with regard to membership nor required to show any membership card (N.T. 20-21).

20. There were approximately forty people in the bar. The officer waited until some of the patrons cleared out prior to ordering a drink. The officer eventually made his way to the bar. He ordered a twelve ounce Coors Lite beer at approximately 2:42 a.m. from a male bartender, who was wearing a shirt with the words "Yik Yak" on it, like the door person (N.T. 21-22).

21. The bartender did not challenge the officer with regard to membership when he purchased his beer. The officer paid approximately \$4.50 for the beer (N.T. 22-23).

22. The officer noted that the music that he had heard outside was the same that was being played inside of the premises. The premises had no disc jockey but had a touch screen jukebox on the wall behind the bar. He could hear the music playing throughout the entire premises. There were speakers throughout the premises (N.T. 23-24).

23. The officer departed the premises at approximately 3:25 a.m. At approximately 3:00 a.m., the lights were turned on, the bartenders made the announcement for last call. The officer approached the bar at approximately 3:05 a.m. and purchased a twelve ounce Coors Lite bottle of beer. He also again paid \$4.50 for the beer. The cash register was operational at this time (N.T. 25-26).

24. The officer observed 35 to 40 people in the premises on the first floor at this time (N.T. 26).

25. At approximately 3:06 a.m., the officer went to the back of the bar and a few minutes later, he saw a bouncer wearing a brown t-shirt with the words "Yik Yak" in a light color on the chest. The bartender began to move people to the front of the bar. The officer asked if the upstairs was open and he was told that it was not open, because it was a holiday weekend. The officer did not go up the steps (N.T. 26).

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26. The officer departed the premises at approximately 3:20 a.m. At approximately 3:18 a.m., a female made a purchase of a twelve ounce Michelob Ultra beer from one of the bartenders. He saw that woman and another male move towards the front and then go upstairs. The officer departed at 3:25 a.m. When the officer left the premises, the music was no longer playing (N.T. 25).

27. The officer conducted a surveillance outside the premises for another twenty to twenty-five minutes. He departed the premises at 3:50 a.m. When the officer departed the premises at 3:25 a.m., he had the beer in his possession but put it down prior to leaving the premises (N.T. 28).

#### CONCLUSIONS OF LAW:

Count No. 1 - On August 8 and September 5, 2010, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1).

Count No. 2 - On August 8 and September 5, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16).

Count No. 3 - On September 5, 2010, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a).

Count No. 4 - On September 5, 2010, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a).

#### PRIOR RECORD:

Licensee has been licensed since May 30, 1996, and has a record of prior violations as follows:

Citation No. 99-1825. \$400.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.  
August 6, 1999.

Citation No. 04-1780. \$850.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.  
On 114 dates from January 8 to August 5, 2004. (All dates except April 23, 2004 withdrawn by Bureau)
2. Noisy and/or disorderly operation. (Withdraw by Bureau)  
On 43 dates from January 8 to August 4, 2004.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.  
On 10 dates from March 12 to August 15, 2004.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
On 17 dates from March 4 to August 15, 2004.
5. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.  
August 15, 2004.
6. Sales to nonmembers.  
September 3, 2004.

Citation No. 06-2108. \$2,900.00 fine.

1. Sales to nonmembers.  
March 17, April 28 and May 14, 2006.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
March 17 and May 14, 2006.
3. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 3:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.  
March 17, 2006.
4. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.  
March 17 and May 14, 2006.
5. Sales between 3:00 a.m. and 7:00 a.m.  
March 17 and May 14, 2006.

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6. Sales to minors. (Dismissed by ALJ)  
May 14, 2006.
7. Possessed or operated gambling devices or paraphernalia  
or permitted gambling or lotteries, poolselling and/or  
bookmaking on the licensed premises.  
January 26, 28, March 18, May 11, 12 and 14, 2006.

Citation No. 07-0451. \$3,300.00 fine.

1. Sales to nonmembers.  
October 2, 22, December 17, 2006 and January 14, 2007.
2. Sales between 3:00 a.m. and 7:00 a.m.  
October 22, December 17, 2006 and January 14, 2007.
3. Permitted patrons to possess or remove alcoholic  
beverages after 3:30 a.m.  
December 17, 2006 and January 14, 2007.
4. Failed to require patrons to vacate the premises not later  
than one-half hour after the required time.  
December 17, 2006 and January 14, 2007.
5. Permitted patrons to enter the premises between 3:30 a.m.  
and 7:00 a.m. when they did not possess an Extended  
Hours Food Permit.  
December 17, 2006.
6. Possessed or operated gambling devices or permitted  
gambling on the licensed premises.  
January 14, 2007.

Citation No. 07-2031. \$2,500.00, 30 days suspension and  
R.A.M.P. training mandated.

1. Sales to nonmembers.  
April 20, May 17, June 14 and 28, 2007.
2. Failed to require patrons to vacate the premises not later  
than one-half hour after the required time.  
March 17, 31, April 20, May 17, June 9, 14 and 28, 2007.
3. Permitted patrons to possess or remove alcoholic  
beverages after 3:30 a.m.  
March 31, April 20, May 17, June 9, 14 and 28, 2007.
4. Sales between 3:00 a.m. and 7:00 a.m.  
March 31, April 20, May 17, June 9, 14 and 28, 2007.
5. Sales to minors.  
June 28, 2007.
6. Permitted patrons to enter the premises between 3:30 a.m.  
and 7:00 a.m. when they did not possess an Extended  
Hours Food Permit.  
May 17 and June 14, 2007.

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7. Minors frequenting.  
June 28, 2007.

Citation No. 08-2946. \$1,000.00 and three days suspension.

1. Sales to nonmembers.  
August 24, 2008.

Citation No. 09-0173. \$500.00 fine.

1. Failed to post in a conspicuous place on the outside of the  
licensed premises a notice of suspension.  
November 17, 18, 22, 27, December 4, 11 and 16, 2008.

DISCUSSION:

The evidence was sufficient to show that Licensee violated the citation as charged. Under the circumstances, that is to say that this is the third or greater violation in the past four years, a monetary penalty and mandatory suspension 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 Count Nos. 1, 3 and 4 of in this case.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 2 of this case.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$1,000.00 and five days suspension.
- Count No. 2 - \$3,500.00 and five days suspension.
- Count No. 3 - \$500.00.
- Count No. 4 - \$500.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, The United Independent Italian American Club of the City of Philadelphia, License Number C-1902, pay a fine of Five Thousand Five Hundred Dollars (\$5,500.00) 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.

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IT IS ALSO ORDERED that the Club Liquor License of The United Independent Italian American Club of the City of Phila., License Number C-1902, be suspended for a period of ten (10) days **BEGINNING** at 7:00 a.m. on Monday, November 7, 2011 and **ENDING** at 7:00 a.m. on Thursday, November 17, 2011.

Licensee is directed on Monday, November 7, 2011 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

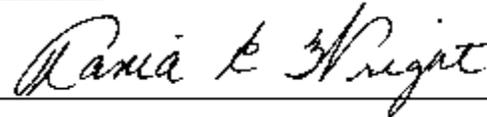
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Thursday, November 17, 2011 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 8<sup>TH</sup> day of August, 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.

**If filing an appeal, it must be received within 30 days of the mailing date of the Administrative Law Judge's Order. Mail to or contact the PA Liquor Control Board, Office of Chief Counsel, Room 401, Northwest Office Bldg., Harrisburg, PA 17124-0001. Phone No. 717-783-9454.**

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Detach Here and Return Stub with Payment

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The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** 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

Citation No. 10-2205  
The United Independent Italian