

Mailing Date: FEB 01 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2464
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-420203
	:	
VETERANS OF FOREIGN WARS	:	
SGT. EMMOR WILLIAMS POST 2404	:	LID - 1315
109-113 N. 7 TH AVE.	:	
COATESVILLE PA 19320-3303	:	
	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. C-2563	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

**KENNETH BOND
PRO SE**

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 23, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Veterans of Foreign Wars, Sgt. Emmor Williams Post 2404, License Number C-2563 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, June 14, 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 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), in that on September 26, 2010, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began September 23, 2010 and ended October 20, 2010. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested on November 1, 2010 and was signed as received at the licensed premises on November 23, 2010. A citation was issued to the licensed premises on November 23, 2010 and was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on December 6, 2010 (N.T. 10-13 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement went to the licensed premises on two occasions. During the first visit, the officers and other officers from the Bureau of Enforcement were asked to assist the Coatesville Police Department with an initiative known as Operation Iron Shield. As a part of that investigation, the officers went to the licensed premises on Saturday, September 25, 2010 into the early morning hours of Sunday, September 26, 2010 (N.T. 6).

3. The Bureau officers were accompanied by officers from the Coatesville Police Department and members of the State Probation and Parole Department (N.T. 7).

4. Prior to visiting this establishment, the officers visited eight to ten other licensed premises over a six to eight hour period (N.T. 7).

5. At 12:40 a.m., during the early morning hours of September 26, 2010, the Bureau officer entered the premises and spoke to a female bartender who was behind the counter. He informed her that he would be conducting a routine inspection of the premises (N.T. 7-8).

6. The bartender did not have access to a locked office. The officer advised the bartender that he would contact Mr. Bond at a later date to set up a meeting to see those records (N.T. 8-9).

7. No violations were issued based upon that visit to the premises (N.T. 9).

8. On October 20, 2010, the officer returned to the premises to speak with Mr. Bond. He arrived at approximately 10:30 a.m. Mr. Bond provided him with the requested records (N.T. 9-10).

9. When the officer entered the premises in order to conduct a routine inspection, there was already an officer from the Bureau inside the premises. Approximately ten minutes earlier, prior to the officers entering the establishment, another officer entered in an undercover capacity (N.T. 16).

10. The officer from the Bureau of Enforcement entered the premises on September 26, 2010 at approximately 12:30 a.m. He is not a member of this or any other VFW Post (N.T. 17-19).

11. The officer believes that he was requested to show identification. He was not asked to show a membership card nor was he charged a cover charge (N.T. 20-21).

12. The officer ordered and was served a twelve ounce Corona beer and paid \$4.00 for the purchase (N.T. 22).

13. Other members of the detail entered the premises and stated that there may have been approximately eight people. The officer remained in an undercover capacity during the other officers' visit to the premises (N.T. 23-24).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On September 26, 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).

PRIOR RECORD:

Licensee has been licensed since May 7, 1935, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has had a record of prior violations as follows:

Citation No. 98-0328. \$50.00 fine.

1. Sales to nonmembers.

Citation No. 00-0952. \$350.00 fine. Fine not paid and license suspended for one day and continuing thereafter until fine paid.

1. Sales after the license expired and had not been renewed and/or validated.

Citation No. 07-2112. \$300.00 fine.

1. Sales to nonmembers.
August 9, 2007.

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Citation No. 08-1949. \$400.00 fine.

1. Sales to nonmembers.
June 21 and July 18, 2008.

Citation No. 10-0483. \$700.00 fine.

1. Sales to nonmembers.
December 9, 2009, January 2 and February 12, 2010.

Citation No. 10-0815. Three days suspension.

1. Sales to nonmembers.
March 14, 2010.

DISCUSSION:

Licensee served an undercover officer who was not a member of the club. Licensee has an extensive record for similar violations. Under the circumstances, a \$500.00 fine and four day 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 in this case.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Veterans of Foreign Wars, Sgt. Emmor Williams Post 2404, License Number C-2563, pay a fine of Five Hundred Dollars (\$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.

IT IS FURTHER ORDERED that the Club Liquor License of Veterans of Foreign Wars, Sgt. Emmor Williams Post 2404, License Number C-2563, be suspended for a period of four (4) days **BEGINNING** at 7:00 a.m. on Thursday, May 10, 2012 and **ENDING** at 7:00 a.m. on Monday, May 14, 2012.

Licensee is directed on Thursday, May 10, 2012 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.

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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 Monday, May 14, 2012 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction of this matter is retained.

Dated this 24TH day of January, 2012.



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 you wish to appeal the decision on the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact the Chief Counsel's Office of the Pennsylvania Liquor Control Board at 717-783-9454.

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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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