

Mailing Date: OCT 26 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0003
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-414701
	:	
417 HOSPITALITIES LLC	:	
417 N. 8 TH ST.	:	LID - 62409
PHILADELPHIA PA 19123-3916	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-4202	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 11, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 417 Hospitalities, LLC, License Number R-AP-SS-4202 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, May 24, 2011, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. §1-102, in that on August 7, 2010, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on June 15, 2010 and ended on December 7, 2010. A notice of violation letter dated December 26, 2010 was sent to the licensed premises by certified mail, return receipt requested. A citation dated January 11, 2011 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was returned unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on April 6, 2011 by certified mail, return receipt requested, and by first class mail to John Frankowski at 34 Fawn Hollow Lane, Mullica Hill, NJ 08062. Despite that notice, no one appeared on behalf of the Licensee (N.T. 8-11 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement received this assignment by a Sergeant from the Philadelphia Police Department. The officer initially contacted him when it was first assigned with regard to a complaint of disorderly operations and sales to minors. The Sergeant faxed numerous Philadelphia police reports, approximately ten, to the Bureau of Enforcement. The officer found one other report related directly to the licensed premises (N.T. 5-6).

3. The officer was unable to reach the Philadelphia police officer and he never returned any of the officer's calls pertaining to that one issue. The Enforcement officer attempted to contact him on three or four occasions (N.T. 6).

4. The Enforcement officer visited the licensed premises on September 9, 2010. He arrived at 1:45 a.m., but could not get in. He maintained a surveillance outside (N.T. 6-7).

5. During the course of the investigation, visits to the premises were made by two other Bureau officers in conjunction with "Operation Pressure Point" which included the Philadelphia Police, Citywide Vice and the Philadelphia Department of Licenses and Inspections (N.T. 7-8).

6. An officer from the Bureau of Enforcement was involved in the detail on Saturday, August 7, 2010 at 11:00 p.m. Upon arriving at the premises, a Mr. Thomas Matos indicated he was the person in charge. The officer informed him that she was there to conduct a routine inspection of the premises. At that time, the premises was open and operating with 150 patrons inside (N.T. 13).

7. A second individual identified himself as Ronald Frumento and provided the officers with the liquor license and gave them directions as to where to find records and permits (N.T. 14).

8. The officer found that the premises maintained no food and sold no food. There were kitchen items such as a freezer, but it had not been used in four to five years (N.T. 14-15).

9. Outside in a tent, the officers found a large commercial silver freezer and a propane grill, which appeared not to have been used in a number of years (N.T. 15).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On August 7, 2010, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items, in violation of Section 102 of the Liquor Code, 47 P.S. §1-102.

PRIOR RECORD:

Licensee has been licensed since January 7, 2010, and has no record of prior violations.

DISCUSSION:

This Licensee maintains a restaurant liquor license and as such must be a bona fide restaurant, maintaining and selling food items on the premises. Under the circumstances, a monetary penalty shall be imposed. Licensee must abide by the rules and regulations of the Liquor Code if it wishes to maintain the restaurant liquor license. The premises has been licensed since January 7, 2010 and had no violations prior to August 2, 2010. Therefore, a \$450.00 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

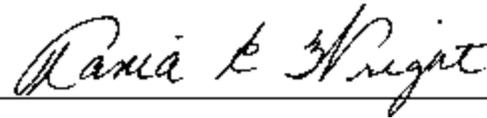
ORDER:

THEREFORE, it is hereby Ordered that Licensee, 417 Hospitalities, LLC, License Number R-AP-SS-4202, pay a fine of Four Hundred Fifty Dollars (\$450.00) 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 ALSO ORDERED that Licensee, 417 Hospitalities, License Number R-AP-SS-4202, submit a copy of a Verification indicating that the licensed premises is a bona fide restaurant in that they now maintain sufficient food items. If said documentation is not submitted within twenty (20) days from the mailing date of this Adjudication, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

Jurisdiction of this matter is retained.

Dated this 12TH day of October, 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

VERIFICATION

I/We, 417 Hospitalities, LLC, License No. R-AP-SS-4202, do hereby affirm food is served on the premises (attach menu or list of items offered for sale) as of _____ (date).

Subject to the penalties contained in 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities, the undersigned officer(s) verifies that I/We are signing and executing this document as the authorized act and deed of the licensee. I/We hereby certify that the foregoing is true and correct.

Corporate Officer's Signature

Corporate Officer's Signature

Date

Date

NOTE: Mail Verification and accompanying documents to:

PLCB – OFFICE OF ADMINISTRATIVE LAW JUDGE
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661