

Mailing Date: JUNE 23 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0071
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-421949
v.	:	
	:	LID - 44979
DOC'S UNION PUB INC	:	
1843 S 2 nd ST	:	
PHILADELPHIA PA 19148-1946	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-8197	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on January 25, 2011. The citation contains three counts.

The first count alleges that Licensee violated §§491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2), and 4-493(16) on December 13 and 15, 2010, by selling, furnishing and/or giving alcoholic beverages during a time when its Restaurant Liquor License was suspended at Citation No. 10-0735.

The second count alleges that Licensee violated §15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), on December 13, 14, 15 and 16, 2010, by failing to post a Notice of Suspension in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside.

The third count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on December 15, 2010, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

At the hearing scheduled for April 21, 2011, 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 November 3 through December 16, 2010, and sent it written notice of the results on January 6, 2011 (N.T. 9-10, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on January 25, 2011 (N.T. 10-11, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on March 3, 2011.
4. In an adjudication of Citation No. 10-0735 which was mailed on October 27, 2010, the Honorable Tania E. Wright suspended this licensee for four days beginning at 7:00 a.m. on Monday, December 13, 2010. The order including this instruction:

Licensee is directed on Monday, December 13, 2010 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.

5. On Monday, December 13, 2010, a liquor enforcement officer arrived at the licensed premises at 8:00 p.m. and found it open and operating. There were about seven patrons drinking alcoholic beverages, attended by one bartender. The officer purchased a bottle of beer, and left the premises at 8:25 p.m. There was no suspension placard posted (N.T. 5-8).
6. On December 14, 2010, the officer visited the premises at 4:15 p.m., but found it closed. There was no suspension placard posted (N.T. 8-9).
7. On December 15, 2010, a different liquor enforcement officer arrived in the area of the licensed premises at about 8:20 p.m. and heard music emanating from it at a distance of 70 feet. The officer entered the premises and heard the same music she had heard outside, coming from loudspeakers inside (N.T. 12-13).
8. The officer purchased draft beer for \$3. There was no suspension placard posted in the premises. At 8:30 p.m. a detail of liquor enforcement officers entered the premises and informed Licensee's president that the license was under suspension and that the service of alcoholic beverages must cease. Licensee's president said he was not aware of the order (N.T. 13-18).
9. The order suspending the license was mailed to and received by Licensee's attorney, who had entered his appearance on July 23, 2010. This is a copy of the return receipt card:

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<input type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: George Bochetto, ESA 1524 Locust ST Philadelphia, PA 19102		B. Received by (Printed Name) T. O'Hara	C. Date of Delivery
2. Article Number (Transfer from service label) 7010 1870 0002 8492 1743		D. Is delivery address different from item 1? If YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
PS Form 3811, February 2004 Domestic Return Receipt 10-0735 10295-02-M-1549			

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since December 23, 1999, and has had six prior violations:

Citation No. 01-1545. \$400.00 fine.

1. Operated without a health permit. April 28, 2001.

Citation No. 03-0871. \$1,000.00 fine.

1. Sales to minors. February 8 and March 29, 2003.
2. Minors frequenting. February 8 and March 29, 2003.

Citation No. 06-2848C. \$1,500.00 fine.

1. Sales to a minor. September 21, 2006.

Citation No. 07-0778C. \$2,000.00 fine, mandatory R.A.M.P. – certification, 1 day suspension.

1. Sales to minors. November 17 and December 21, 2006.
2. Minors frequenting. November 17 and December 21, 2006.

Citation No. 09-2929. 3 days suspension.

1. Sales on Sunday after 2:00 a.m. and 11:00 a.m. November 29, 2009.
2. Failed to require patrons to vacate premises by the required time. November 19, 2009.
3. Permitted patrons to possess alcoholic beverages after 2:30 a.m. November 29, 2009.

Citation No. 10-0735. \$250.00 fine. Verification of compliance, 4 days suspension, mandatory R.A.M.P. – certification.

1. Operated without a valid health permit. January 15, 22 and February 27, 2010.
2. Sales to minors. January 22, 2010.
3. Minors frequenting. January 22, 2010.

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 other counts any fine must be in the \$50.00 to \$1,000.00 range.

Since this is Licensee's fourth violation in a three year period of a provision mentioned in 47 P. S. §4-471(b), the law requires that the penalty include license suspension or revocation.

Penalties are assessed as follows:

- Count No. 1 – a fine of \$1,000.00 and suspension of license for 5 days.
- Count No. 2 – a fine of \$750.00.
- Count No. 3 – a fine of \$250.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Doc's Union Pub, Inc., License No. R-AP-SS-EHF-8197, shall pay a fine of two thousand dollars (\$2,000.00) 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.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Licensee, Doc's Union Pub, Inc., License No. R-AP-SS-EHF-8197, shall be suspended for a period of five (5) days BEGINNING at 7:00 a.m. on Monday, August 22, 2011, and ENDING at 7:00 a.m. on Saturday, August 27, 2011.

Licensee is directed on Monday, August 22, 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 replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Saturday, August 27, 2011, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 20TH day of JUNE, 2011



David L. Shenkle, J.

jb

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.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

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