

Mailing Date: JUL 28 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0201
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-422025
v.	:	
	:	LID - 53228
CHAPPY'S BEEHIVE INC	:	
3528 N 17 th ST	:	
PHILADELPHIA PA 19140-4002	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-4451	:	

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 February 15, 2011. The citation alleges that Licensee violated §§401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), on January 16, 2011, by selling, furnishing or giving liquor for consumption off premises.

At the hearing scheduled for June 7, 2011, 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 5, 2010, through January 20, 2011, and sent it written notice of the results on January 28, 2011 (N.T. 8-9, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on February 15, 2011 (N.T. 9, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on April 21, 2011.
4. On January 16, 2011, liquor enforcement officers entered the licensed premises at 12:10 a.m. There were about five patrons and one bartender. One of the officers ordered mixed drinks for both of them. The drinks were served in 8-ounce clear plastic cups. The officers sat with these drinks for 35 to 40 minutes. When they left the premises the officers took the glasses, which still contained alcohol, with them. This should have been obvious to the bartender, but she made no objection (N.T. 4-11).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The relevant law on which this citation is based provides as follows:

SECTION 4-401. Authority to issue liquor licenses to . . . restaurants . . .

(a) Subject to the provisions of this act and regulations promulgated under this act, the board shall have authority to issue a retail liquor license . . . entitling the . . . restaurant . . . to purchase liquor from a Pennsylvania Liquor Store and to keep on the premises such liquor and, subject to the provisions of this act and the regulations made thereunder, to sell the same and also malt or brewed beverages to . . . patrons . . . for consumption on the . . . restaurant . . . premises.

SECTION 4-406. Sales by liquor licensees; restrictions

(a) (1) Every . . . restaurant . . . liquor licensee may sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the . . . restaurant habitually used for the serving of food to guests or patrons . . .

(emphasis supplied)

In this case it is clear that the mixed drinks were ordered by people who appeared to have ordered them for the purpose of drinking them on the premises. No request was made to prepare the drinks "to go," which is the usual method used by undercover liquor enforcement officers who desire to test a licensee's compliance with this part of the law.

The circumstance that the officers sat at the bar for a lengthy period without making another purchase before leaving with the plastic glasses in their hands raises a question in my mind as to the seriousness with which I should regard this violation. It is one thing for a bartender to comply with a patron's request to prepare a mixed drink "to go" and it is another thing entirely if a customer nurses that drink for more than a half hour before taking it out of the premises, without another word. Especially in light of the officer's "about four" visits to the premises, during which she observed only one violation, I am not impressed with the worthiness of this case.

Notwithstanding this observation, I am aware that in the administrative law context there is no authority for me to regard any proven violation as *de minimis*. When the law provides that a licensee is only permitted to sell liquor for consumption in the premises, a necessary corollary of that law is that licensees may not permit patrons to leave the licensed premises in possession of liquor.

PRIOR RECORD:

Licensee has been licensed since September 15, 2004, and has had two prior violations:

Citation No. 09-1273. \$350.00 fine and verification of compliance.

1. Not a *bona fide* restaurant (insufficient food, eating utensils, dishes). April 18, 2009.

Citation No. 10-2006. \$500.00 fine.

1. Not a *bona fide* restaurant (insufficient food, eating utensils, dishes). August 13, 2010.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Chappy's Beehive, Inc., License No. R-AP-SS-OPS-4451, shall pay a fine of one hundred dollars (\$100.00) 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 19TH day of JULY, 2011.



David L. Shenle, 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

Citation No. 11-0201
Chappy's Beehive, Inc.