

Mailing Date: FEB 03 2012

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

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| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 11-0506 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | |
| v. | : | Incident No. W01-424684 |
| | : | |
| CADEN INC. | : | |
| T/A CADENS IRISH PUB | : | LID - 55581 |
| 6053-55 CASTOR AVE. | : | |
| PHILADELPHIA PA 19149-3208 | : | |
| | : | |
| | : | |
| PHILADELPHIA COUNTY | : | |
| LICENSE NO. R-AP-4865 | : | |

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 29, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Caden, Inc., t/a Cadens Irish Pub, License Number R-AP-4865 (hereinafter "Licensee").

Caden, Inc.
t/a Caden's Irish Pub
Citation No. 11-0506

An Administrative hearing was held on Tuesday, July 12, 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 Sections 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), in that on February 12, 2011, Licensee, by its servants, agents or employees, sold, furnished or gave liquor for consumption off premises.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on January 10, 2011 and ended on February 27, 2011. A notice of violation letter dated March 11, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received at the licensed premises. A citation dated March 29, 2011 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was returned to sender unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on May 27, 2011 by certified mail, return receipt requested. That certified mailing was unclaimed. Therefore, on May 27, 2011, a first class copy and certified copy of the citation hearing notice was sent to James Ross, 5224 East Street, Philadelphia, PA 19120 (N.T. 9-10 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement investigated the licensed premises, entering the premises on February 12, 2011 at 12:20 a.m. On this day, she was accompanied by another officer. When the officer entered the bar, it was open and operating. There were approximately fifty patrons on the premises and a bartender on duty (N.T. 5-6).

3. The officers went to the bar and ordered drinks and sat on the bench near the door of the premises. The officer ordered two Bacardi lime cranberry alcoholic mixed beverages. In preparing the drinks, the bartender retrieved two sixteen ounce clear plastic cups, prepared the beverages and placed them on the bar in front of the officer. The officer saw the bartender go to the speed rack and pour alcohol into the cups. She was charged \$12.00 for the two drinks. The sale was rung up on the cash register (N.T. 6-7).

4. After receiving the drinks, the officers walked over, sat down and continued to make observations inside the premises (N.T. 7).

5. The officers left the premises at 1:15 a.m. The security guard opened the door and permitted them to go out of the premises with their drinks in their hands (N.T. 7-8).

6. The officer made two other visits to the licensed premises, January 19, 2011 and February 27, 2011, but found no further violations (N.T. 8).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On February 12, 2011, Licensee, by its servants, agents or employes, sold, furnished or gave liquor for consumption off premises, in violation of Sections 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1).

PRIOR RECORD:

Licensee has been licensed since January 31, 2006, and has a record of prior violations as follows:

Citation No. 06-1832. \$1,550.00 and one day suspension with thereafter conditions. Suspension vacated.

1. Sales to a minor.
June 28, 2006.
2. Not a bona fide restaurant in that food items were insufficient.
June 28, 2006.
3. Failed to clean coils at least once every 7 days.
(Dismissed by A.L.J.
Between April 26 and June 28, 2006.

Citation No. 07-2472. \$600.00 fine and Verification conditions corrected. Fine not paid and license suspended one day and thereafter until fine paid. Licensee's Request for Reconsideration modified penalty to \$600.00 fine and one day suspension.

1. Operated the licensed establishment without a valid health permit or license.
August 30 and September 6, 2007.
2. Failed to keep records on the licensed premises.
August 30 and September 6, 2007.

Citation No. 09-2448. \$1,400.00 fine. Fine not paid and license suspended one day and thereafter until fine paid. Fine still not paid and license revoked.

1. Minor frequenting.
August 14 and 15, 2009.
2. Possessed or operated gambling devices or permitted gambling on the licensed premises.
August 15, 2009.

Caden, Inc.
t/a Caden's Irish Pub
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Citation No. 10-1380. Revocation for administrative purposes.

1. Operated the licensed establishment without a valid health permit or license.
May 22 and 23, 2010.

Citation No. 10-2644. Revocation.

1. Failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.
October 25 and 30, 2010.

DISCUSSION:

The Licensee furnished alcoholic beverages and allowed the officers to take the alcoholic beverages off the premises, in plain view of the security guard.

Licensee has a very extensive history of violations, none of which involve providing alcohol for consumption off the premises. Under the circumstances, a \$300.00 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, Caden, Inc., t/a Caden's Irish Pub, License Number R-AP-4865, pay a fine of Three Hundred Dollars (\$300.00) 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.

Caden, Inc.
t/a Caden's Irish Pub
Citation No. 11-0506

Jurisdiction of this matter is retained.

Dated this 30TH 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 of the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact Chief Counsel's Office 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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Caden, Inc.