

Mailing Date: JAN 18 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0936
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-428818
v.	:	
	:	LID - 56365
K BENCHO INC.	:	
T/A THE BROTHERS GRIMM	:	
136 142 & 150 OLD BEAVER GRADE	:	
ROAD	:	
CORAOPOLIS PA 15108-5100	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-19705	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily Gustave, Esquire

LICENSEE COUNSEL: Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 27, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against K. Bencho, Inc., t/a The Brothers Grimm, License Number R-AP-SS-19705 (hereinafter Licensee).

The citation charges Licensee with violation of Section 437 of the Liquor Code, [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations, [40 Pa. Code, §5.41], in that during the period April 7 through 10, 2011, Licensee, by its servants, agents or employees, operated its licensed establishment without a valid health permit or license, which expired on February 28, 2011.

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An administrative hearing was conducted on November 9, 2011, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire, Licensee was not present.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on April 5, 2011, and completed its investigation on April 26, 2011. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation disclosed by its investigation in a letter dated May 11, 2011, which was sent by certified mail and received by Licensee on May 24, 2011. (Exhibits C-1, C-2)
3. This citation was issued on May 27, 2011, and was sent by certified mail and received by Licensee. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on September 26, 2011 by first class mail as well as certified mail. (Official Notice)
5. The aforementioned certified mail of the notice of hearing was signed and returned by Licensee. (Official Notice)

DATE – April 7, 2011

6. On April 7, 2011, a Liquor Enforcement officer contacted the Allegheny County Health Department and was advised that Licensee's health permit expired on February 28, 2011 and had not been renewed. (N.T. 9)
7. On April 7, 2011, at 4:40 p.m., a Liquor Enforcement officer entered Licensee's premises in an undercover capacity and observed a female bartender later identified as Valerie Toomey, rendering service of alcoholic beverages to two patrons. The two patrons were observed in possession of draft beer. (N.T. 10)
8. At 4:42 p.m., the Enforcement officer purchased a 12oz bottle of Coors Light beer from Ms. Toomey for \$3.25 which transaction was recorded on the cash register. (N.T. 10)
9. Subsequent to the aforementioned purchase, the Enforcement officer identified himself to Ms. Toomey and conducted a routine inspection of the premises. The Enforcement officer asked to speak with the person in charge of the premises and was advised by Ms. Toomey, that Steve Taylor was not available and that she did not have access to Licensee's records. (N.T. 10, 11)

10. During this inspection, the Enforcement officer noted that the health permit posted at Licensee's premises expired February 2011. (N.T. 11)

11. The Enforcement officer then advised Ms. Toomey to have Mr. Steve Taylor contact him in order to complete his inspection. (N.T. 11)

DATE – April 11, 2011

12. On April 11, 2011, Mr. Steve Taylor contacted the Enforcement officer and advised him that he would be present at the premises at 3:30 p.m. in order for the officer to complete his inspection. (N.T. 11)

13. The Enforcement officer contacted the Allegheny County Health Department and was advised that Licensee obtained a valid health permit earlier, during the day of April 11, 2011. (N.T. 11)

14. At 3:30 p.m., the Enforcement officer arrived at Licensee's premises and met with Mr. Taylor. (N.T. 12)

15. Upon questioning, Mr. Taylor admitted to the Enforcement officer that Licensee's premises was open and engaging in sales of alcoholic beverages on April 8, 9, and 10, 2011. (N.T. 12)

16. On April 26, 2011, the Bureau received an Attestation from the Allegheny County Health Department stating that Licensee did not have a valid health permit between March 1, 2011 and April 10, 2011. (Exhibit C-5)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On April 7 through 10, 2011, Licensee, by its servants, agents or employees, operated its licensed establishment without a valid health permit or license, which expired on February 28, 2011, in violation of Section 437 of the Liquor Code, [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations, [40 Pa. Code, §5.41].

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988);

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Omicron Enterprises, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

PRIOR RECORD:

Licensee has been licensed since August 17, 2006, and has had no prior violation.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or 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.

In mitigation

Licensee's failure to submit a pre-hearing memorandum and its failure to appear at the Administrative hearing held in this matter demonstrates a clear lack of interest in this Liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of \$500.00.

ORDER:

THEREFORE, it is hereby ordered that K. Bencho Inc., t/a The Brothers Grimm, License Number R-AP-SS-19705, pay a fine of \$500.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 11TH day of January, 2012.



Roderick Frisk, J.

clm

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

Detach Here and Return Stub with Payment

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** 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

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K. Bencho Inc.