

Mailing Date: SEP 18 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 11-1707
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-434056
	:	
1421 LICENSE LLC	:	
1421 WILMINGTON PIKE	:	PLCB LID - 64032
CHADDS FORD TWP.	:	
WEST CHESTER PA 19382-8316	:	
	:	PLCB License No. R-AP-SS-6316
	:	
DELAWARE COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

WILLIAM J. SHEHWEN, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 4, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 1421 License, LLC, License Number R-AP-SS-6316 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, April 12, 2012, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

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 on July 28, 2011, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on July 23, 2011 and ended on August 16, 2011. A notice of violation letter dated August 29, 2011 was sent to the licensed premises by certified mail, return receipt requested. The notice was signed as received. A citation dated October 4, 2011 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was returned and was not able to be delivered. The license was not in safekeeping and was sent by first class mail to the Licensee on November 3, 2011 (N.T. 11-20 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises relative to a complaint that the premises' health license had expired. The officer arrived at the premises on July 28, 2011 at approximately 2:00 p.m. and spoke to an employee who identified himself as the person in charge, Jon Rusakov. The only health license available was issued in the name of Olive Branch of Dilworthtown, 1311 Wilmington Pike. The address for this premises is 1421 Wilmington Pike. In addition, the health license had expired on April 28, 2011 (N.T. 7-8).

3. No other violations were found as a result of the inspection (N.T. 9).

4. Certified records from the Pennsylvania Department of Agriculture Bureau of Food Safety and Laboratory Services indicate that the licensed premises did not have a valid health permit from April 29, 2011 through July 28, 2011 (N.T. 9-11, 20 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On July 28, 2011, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, 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.

PRIOR RECORD:

Licensee has been licensed since April 21, 2011, and has no record of prior violations.

DISCUSSION:

Licensee is charged with operating an establishment without a valid health permit or license. The only license that was on the premises expired on April 28, 2011. It does not appear that that health permit was valid for this particular premises. The Licensee is reminded that the health permit must be displayed on the wall under a transparency at all times when the premises is in operation and must be current and valid.

The Licensee submitted a copy of a Retail Food Facility License issued by the Commonwealth of Pennsylvania Department of Agriculture Bureau of Food Safety and Laboratory Services, which indicates that it now has a health permit which is current until August 29, 2012. It is suggested that the Licensee timely renew this license. It is noted that there is no indication that the premises was in any way unsanitary. However, it did not have the required health license posted on the premises.

In that the Licensee has no record of prior violations, a \$250.00 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.

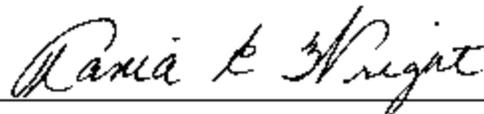
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 1421 License, LLC, License Number R-AP-SS-6316, pay a fine of Two Hundred Fifty Dollars (\$250.00) 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.

Jurisdiction of this matter is retained.

Dated this 12TH day of September, 2012.



Tania E. Wright, J.

1421 License, LLC
In Re: Citation No. 11-1707

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 on the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact the Office of the Chief Counsel of the Pennsylvania Liquor Control Board 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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1421 License, LLC