

Mailing Date: MAY 31 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-1965
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-435102
v.	:	
	:	LID - 64488
BRISTOL EDWIN INC	:	
423 W BRISTOL ST	:	
PHILADELPHIA PA 19140-2621	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-4799	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 15, 2011. There are two counts in the citation.

The first count alleges that Licensee violated §§406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), on September 25, 2011. by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The second count alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on September 1, 25 and 26, 2011, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2011.

A hearing was held on Thursday, March 22, 2012, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On September 1, 2011, liquor enforcement officers entered the licensed premises at 10:30 p.m. and saw 15 to 20 patrons, mostly in possession of alcoholic beverages. An officer purchased a malt beverage (N.T. 6-7).

2. On September 25, 2011, liquor enforcement officers began surveillance of the licensed premises at 1:30 a.m. At 2:07 a.m. one of the officers entered the premises and saw six patrons in possession of alcoholic beverages. He purchased a malt beverage and returned to his vehicle with it. The six patrons who had been inside were all gone by 2:20 a.m. (N.T. 8-9).

3. On September 26, 2011, liquor enforcement officers inspected the licensed premises at about 4:00 p.m. There were patrons in possession of alcoholic beverages. The food preparation permit on display had expired on April 30, 2011 (N.T. 9-10).

4. Records of the Department of Licenses and Inspections of the City of Philadelphia show that there was no valid preparing/serving food license issued to Licensee on September 1, 9, 10, 25, and 26, 2011, and that this establishment has never applied for one (Exhibit B-3).

CONCLUSIONS OF LAW:

Licensee violated §§406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), on September 25, 2011, by selling alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on September 1, 25 and 26, 2011, by operating the licensed premises without a valid health permit, which expired on April 30, 2011.

PRIOR RECORD:

Licensee has been licensed since February 11, 2011, and has had no prior violations.

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 second count any fine must be in the \$50.00 to \$1,000.00 range. Penalties are assessed as follows:

Count 1 – a fine of \$1,000.00.

Count 2 – a fine of \$250.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bristol Edwin, Inc., License No. R-AP-SS-4799, shall pay a fine of one thousand two hundred fifty dollars (\$1,250.00) 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 Licensee shall, within 20 days of the mailing date of this order, submit a copy of a valid and current health permit to the address given at the end of this adjudication. If Licensee fails to comply, the penalty will be modified to include an indefinite suspension of license, which will continue until a health permit has been supplied.

Dated this 22ND day of MAY, 2012.


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