

Mailing Date: AUG 09 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation Nos. 12-1132
LIQUOR CONTROL ENFORCEMENT	:	& 12-1258
	:	(Consolidated for Hearing
	:	Purposes Only)
	:	
v.	:	
	:	BLCE Incident Nos. W01-445707
	:	& W01-448851
JSMG INC.	:	
3589 RICHMOND ST.	:	
PHILADELPHIA PA 19134-6120	:	PLCB LID - 53000
	:	
	:	
	:	PLCB License No. R-AP-SS-5058
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of citations that were issued on July 31, 2012 and August 21, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against JSMG, Inc., License Number R-AP-SS-5058 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, March 19, 2013, 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 citations are as follows:

Citation No. 12-1132

The citation charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. §4-471, and Section 10-602(3)(a.1)(iv) of the Clean Indoor Air Worker Protection Law, §10-602(3)(a.1)(iv), in that on June 1, 2012, Licensee, by its servants, agents or employes, smoked and/or permitted smoking in a public place where smoking is prohibited.

Citation No. 12-1258

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 24, 2012, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2011.

CITATION NO. 12-1132

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on April 23, 2012 and ended on June 28, 2012. A notice of violation letter dated July 13, 2012 was sent to the licensed premises by certified mail, return receipt requested. A citation dated July 31, 2012 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on January 24, 2013 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received (N.T. 9-10 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises between April of 2012 and June of 2012. As a part of his investigation, he made four undercover visits to the premises. On his third visit to the premises, June 1, 2012, he arrived at 12:15 a.m. He noted a female bartender on the premises. There were several ashtrays across the bar area. Also, a few ashtrays were in the back premises in the area of the pool table. At the time of the officer's visit, there were fifteen patrons who were being served and consuming alcoholic beverages (N.T. 6-7).

3. The officer observed one no smoking sign above the bar area (N.T. 7-8).

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4. The officer observed two patrons in the rear playing pool and who were smoking. At approximately 1:30 a.m., he also saw the bartender smoking a cigarette behind the bar (N.T. 7-8).

5. According to the records of the city of Philadelphia, the Licensee did not possess a waiver of the Clean Indoor Worker Protection Law to permit smoking in an establishment (N.T. 18-19 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On June 1, 2012, Licensee, by its servants, agents or employes, smoked and/or permitted smoking in a public place where smoking is prohibited, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471, and Section 10-602(3)(a.1)(iv) of the Clean Indoor Air Worker Protection Law, §10-602(3)(a.1)(iv).

CITATION NO. 12-1258

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on July 13, 2012 and ended on July 24, 2012. A notice of violation letter dated August 7, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation dated August 21, 2012 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on January 24, 2013 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received (N.T. 16-18 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises on Tuesday, July 24, 2012. The officer was directed to do a compliance check regarding a licensed premises. On that day, he arrived at the premises at approximately 3:50 p.m. to conduct a routine inspection. During the routine inspection, he noted that the health permit had expired on April 30, 2011 (N.T. 14-15).

3. The officer observed fifteen to twenty people in the bar, all with alcoholic beverages in front of them. There was one bartender who pointed the officer to Michael Quinn and Michael Graham, the co-owners. They were able to supply records that the officer needed to review for his routine inspection (N.T. 15).

4. The officer asked them for a current health permit. They were not able to locate one (N.T. 15-16).

5. Records from the city of Philadelphia Department of Licenses and Inspections indicate that Licensee had no valid license on July 24, 2012 and that the last license had expired on April 20, 2011 (Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On July 24, 2012, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 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.

PRIOR RECORD:

Licensee has been licensed since August 30, 2004, and has a record of prior violations as follows:

In Re:

Citation No. 06-1083. \$1,300.00 fine and R.A.M.P. required.

1. Sunday sales between 2:00 a.m. and 11:00 a.m.
February 19, 2006. (Dismissed)
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
February 19, 2006. (Dismissed)
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. (Dismissed)
February 19, 2006.
4. Sold malt or brewed beverages for consumption off premises.
March 2, 2006.
5. Sales to a minor.
March 2, 2006.

Citation Nos. 06-2914 and 07-0139, As Consolidated. \$2,000.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price.
November 19, 2006.
2. Sales after the Restaurant Liquor License expired and had not been renewed and/or validated.
November 19 and December 27, 2006.

Citation No. 07-2930. \$650.00 fine, one day suspension and R.A.M.P mandated. Fine not paid and license suspended for an additional day and thereafter until fine paid.

1. Failed to comply with the Order of the Administrative Law Judge mandating R.A.M.P. training.
October 25 through November 13, 2007.
2. Operated the licensed establishment without a valid health permit or license.
November 13, 2007.

Citation No. 08-2068. \$500.00 fine. Fine not paid and license suspended one day and thereafter until fine paid.

1. Operated the licensed establishment without a valid health permit or license.
August 4, 2008.

Citation No. 08-2361. \$600.00 fine and license suspended one day and thereafter until fine paid.

1. Sold, furnished or gave liquor for consumption off premises.
August 29, 2008.
2. Used loudspeakers or devices whereby music could be heard outside.
August 29, 2008.

Citation No. 09-1546. \$300.00 fine and Verification conditions corrected. Fine not paid and license suspended one day and thereafter until fine paid.

1. Operate the licensed establishment without a valid health permit or license.
June 11, 2009.

Citation No. 10-2503. \$2,000.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m.
October 22, 2010.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
October 22, 2010.
3. Operated the licensed establishment without a valid health permit or license.
May 12, June 18, July 17, September 16 and October 22, 2010.

Citation No. 11-1439X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
June 3, 2011.

Citation No. 11-1737X. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
August 1 and 2, 2011.

DISCUSSION:

On June 1, 2012, patrons as well as bartenders in the licensed establishment smoked cigarettes in violation of the law. The officer made several other visits to the premises during the course of his investigation, but found no other evidence of wrongdoing. The Licensee has an extensive record; however, there appeared to be no prior violations of this nature. Under the circumstances, a \$150.00 monetary penalty shall be imposed.

Licensee has multiple prior violations relative to operating without a valid health license. It would behoove Licensee to timely renew its various licenses and permits and to otherwise abide by the law. Licensee will be required to submit a current health license, along with payment of the fine of \$650.00.

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.

Therefore, penalties shall be assessed as follows:

Citation No. 12-1132
Count No. 1 - \$150.00.

Citation No. 12-1258
Count No. 1 - \$650.00.

Accordingly, we issue the following

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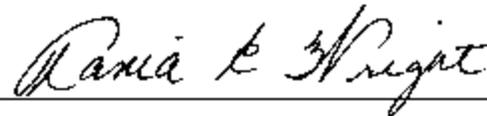
ORDER:

THEREFORE, it is hereby Ordered that Licensee, JSMG, Inc., License Number R-AP-SS-5058, pay a fine of Eight Hundred Dollars (\$800.00) 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.

IT IS ALSO ORDERED that Licensee, JSMG, Inc., License Number R-AP-SS-5058, submit a copy of a current and valid health permit within twenty (20) days from the mailing date of this Adjudication. If said documentation is not submitted within twenty (20) days from the mailing date of this Adjudication, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

Jurisdiction of this matter is retained.

Dated this 2ND day of AUGUST, 2013.



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 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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