

Mailing Date: JUN 08 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 15-1872
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-499301
	:	
v.	:	PLCB LID No. 53541
	:	
CH & JI, INC.	:	PLCB License No. R-SS-873
6525 RISING SUN AVE.	:	
PHILADELPHIA, PA 19111-5246	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE: Chuan Y. Liu

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 27, 2015. There are six counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-437, and a Liquor Control Board regulation, 40 Pa. Code §5.41, during the periods June 1 through August 2 and August 12 through 30, 2015, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2015.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on August 1, 2015, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the service of alcoholic beverages is required to cease.

The third count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on August 1, 2015, by permitting patrons to possess alcoholic beverages in and/or remove them from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fourth count alleges that Licensee violated the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on August 1, 2015, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The fifth count alleges that Licensee violated the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), on August 16, 2015, by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The sixth count alleges that Licensee violated the Liquor Code, 47 P.S. §4-471, the Clean Indoor Air Worker Protection Law, §10-602(3)(a.1)(iv), on August 1 and 16, by smoking and/or permitting smoking in a public place where smoking is prohibited.

A hearing was held on April 19, 2016, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On August 1, 2015, liquor enforcement officers entered the licensed premises at 1:20 a.m. and saw a bartender attending about 18 patrons. Several patrons and the bartender were smoking cigarettes. There were no signs posted regarding smoking. The bartender announced "last call" at 1:50 a.m. Licensee's president was seen counting money from the cash register, and remained behind the bar after the bartender stopped working (N.T. 5-6).

2. A 2:05 a.m. Licensee's president served a bottle of beer to a man seated at the bar. At 2:12 a.m. he prepared a mixed drink, using various liquors, and served it to another man at the bar. At 2:16 a.m. he served these two customers, plus two women, shots of whiskey. One of the officers asked if they could get shots for themselves. Licensee's president then served them two shots of whiskey and took payment of \$7.00 from the money one of the officers had on the bar (N.T.6-7).

3. At 2:17 a.m. Licensee's president served two cans of beer to a man; at 2:22 a.m. he served another shot of whiskey to one of the women who had been served one six minutes earlier. At 2:42 a.m. one of the officers purchased two bottles of beer. At 2:59 a.m. a man purchased a six pack of beer cans to go. When the officers left at 3:00 a.m. there were still eight patrons in the premises in possession of alcoholic beverages (N.T. 7-8, 17).

4. On Sunday, August 16, 2015, liquor enforcement officers entered the licensed premises at 12:50 a.m. and saw a bartender attending eight or nine patrons, some of whom were smoking cigarettes. At 1:45 a.m. the bartender announced "last call," just as Licensee's president entered the premises. At 2:08 a.m. a man was served a mixed drink containing liquor for which he gave a chip of some type. The officers asked for drinks and were told they needed to drink up, as they had only about 20 minutes to get out (N.T. 8-9).

5. Licensee did not have a waiver of the Clean Indoor Air Worker Protection Law, permitting smoking, on either of these dates (Exhibit B-3).

6. On September 14, 2015, a liquor enforcement officer inspected the licensed premises and found that the food preparation permit on display had expired on April 30, 2015. The renewal fee had been paid on August 31, 2015. The licensed premises were closed during the period August 3 through 11, 2015. The Philadelphia Department of Licenses and Inspections extended all health permits in the city for the month of May, 2015 (N.T. 19-21, Exhibit B-4).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since September 13, 2004, and has had prior violations:

In re Citation No. 05-2443. 1 day suspension.

1. Sales on Sunday after 2:00 a.m. October 6, 2005.

In re Citation No. 06-2035. \$450.00 fine.

1. Failed to keep records on the licensed premises. July 25, 2006.
2. Failed to maintain coil cleaning records. July 25, 2006.
3. Not a *bona fide* restaurant (insufficient food). July 25, 2006.

In re Citation No. 07-2923. \$400.00 fine & 3 days suspension, plus 1 day for late payment.

1. Sales between 2:00 a.m. and 7:00 a.m. October 6 and 27, 2007.
2. Failed to vacate the premises by the required time. October 6 and 27, 2007.
3. Permitted patrons to possess alcoholic beverages after 2:30 a.m. October 6 & 27, 2007.
4. Permitted patrons to enter the premises between 2:30 a.m. and 7:00 a.m. without an extended hours food permit. October 6 and 27, 2007.

In re Citation No. 08-1741X. \$100.00 fine.

1. Bad checks for malt or brewed beverages. May 21, 2008.

In re Citation No. 08-2767. \$100.00 fine.

1. Failed to post a notice of suspension. October 22, 2008.

In re Citation No. 09-0189X. \$200.00 fine.

1. Bad checks for malt or brewed beverages. December 4, 2008.

In re Citation No. 09-0745X. \$250.00 fine.

1. Bad checks for malt or brewed beverages. December 10, 2008.

In re Citation No. 10-1300. \$500.00 fine.

1. Permitted smoking in a public place where prohibited.
November 12, December 9, 2009, January 31, March 27 and April 17, 2010.
2. Failed to post signage as required.
November 12, December 9, 2009, January 31, March 27 and April 17, 2010.
3. Failed to keep records on the licensed premises. May 22, 2010.

In re Citation No. 10-2542X. \$300.00 fine.

1. Bad checks for malt or brewed beverages. October 5, 2010.

In re Citation No. 13-1679. \$1,100.00 fine.

1. Loudspeakers heard beyond property line. May 11 and June 9, 2013.
2. Failed to vacate by the required time. May 11, 2013.
3. Permitted smoking where prohibited. May 11, June 9, 22, July 20 and 21, 2013.

In re Citation No. 13-2540. 2 days suspension.

1. Failed to vacate by the required time. August 9 and October 6, 2013.
2. Patrons possessed alcoholic beverages after 2:30 a.m. August 9 & October 6, 2013.
3. Permitted patrons to enter the premises between 2:30 a.m. and 7:00 a.m. without an extended hours food permit. October 6, 2013.

In re Citation No. 14-1483. \$1,000.00 fine and 4 days suspension.

License suspended 1 additional day for late payment.

1. Failed to vacate by the required time. February 1, 2014.
2. Permitted patrons to possess alcoholic beverages after 2:30 a.m. February 1, 2014.
3. Sales between 2:00 a.m. and 7:00 a.m. February 1, 2014.

In re Citation No. 14-1521. Four days suspension.

1. Sales between 2:00 a.m. and 7:00 a.m. May 24, 2014.
2. Smoking in a public place where prohibited. May 24, 2014.

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, second, third and sixth counts, any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in the fourth and fifth counts, any fine must be in the \$1,000.00 to \$5,000.00 range. Since this is Licensee's third violation of a provision of the Crimes Code or a provision mentioned in 47 P.S. §4-471(b) in a four-year period, the law requires that the penalty include license suspension or revocation.

Penalties are assessed as follows:

- Count 1 – a fine of \$150.00.
- Count 2 – suspension of license for two days.
- Count 3 – suspension of license for two days.
- Count 4 – suspension of license for four days.
- Count 5 – suspension of license for four days.
- Count 6 – suspension of license for two days.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, CH & JI, Inc., License No. R-SS-873, shall pay a fine of one hundred fifty dollars (\$150.00) 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.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Licensee, CH & JI, Inc., License No. R-SS-873, shall be suspended for a period of fourteen (14) days (including all permits and Licensee Discount Card) BEGINNING at 7:00 a.m. on Monday, August 1, 2016, and ENDING at 7:00 a.m. on Monday, August 15, 2016. Jurisdiction is retained.

Licensee is directed on Monday, August 1, 2016, at 7:00 a.m. to place the enclosed notice of suspension (Form No. PLCB-1925 as printed with red and black ink) in a conspicuous place on the

outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine & Good Spirits stores.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Monday, August 15, 2016, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 31ST day of MAY, 2016.



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 – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or a check drawn on the account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation, to:

PLCB – Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

Credit/debit cards may be used: if you have already registered with PLCB+ you should be able to pay by Credit/Debit card; if you have not registered with PLCB+ you may obtain the information on how to register by sending an email message to:
RA-LBLICENSINGMOD@pa.gov.