

Mailing Date: FEB 17 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 04-1244
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W07-291268
v.	:	
	:	LID - 49705
TIA M TATTERS	:	
RD 1	:	
COWANSVILLE PA 16218-9801	:	
	:	
ARMSTRONG COUNTY	:	
LICENSE NO. R-AP-18132	:	
	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Nadia Vargo, Esquire

For Licensee
Tia M. Tatters, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 23, 2004, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Tia M. Tatters, License Number R-AP-18132 (hereinafter Licensee).

The citation charges Licensee with violation of Section 5.16 of the Liquor Control Board Regulations [40 Pa. Code §5.16], in that during the period June 30, 2003 through May 24, 2004, Licensee, by her servants, agents or employees, failed to appoint a Board-approved full time manager for the licensed premises.

An administrative hearing was conducted on December 14, 2004, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee Tia M. Tatters appeared on her own behalf.

At the hearing this court granted the Bureau's motion to amend the citation to read: Licensee, by its servants, agents or employees, failed to notify the Board within 15 days of a change of manager which occurred on June 30, 2003, in violation of Section 5.16 of the Liquor Control Board Regulations.

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 May 12, 2004, and completed its investigation on June 29, 2004. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated July 7, 2004, which was sent by certified mail and received by Licensee on July 10, 2004. (Exhibit C-2)
3. The citation was issued on July 23, 2004, and was sent to Licensee by certified mail which was returned unclaimed and by first class mail which was not returned. (Exhibits C-3, C-4)
4. Pursuant to an investigation conducted by the Bureau, Liquor Enforcement Officer Ned Drake contacted Licensee's Board-approved Manager Susan D. Earley on Monday, May 24, 2004. (N.T. 16)
5. Ms. Earley advised Officer Drake that she left her employment with Licensee on June 30, 2003. (N.T. 16, 19-20)
6. The records of the Board reveal that during the period June 30, 2003 through May 24, 2004, Susan D. Earley was listed as Licensee's Board-approved manager. (N.T. 16-17, Ex. C-5)

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); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

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. Licensee, by her servants, agents or employees, failed to notify the Board within 15 days of a change of manager, which occurred on June 30, 2003, in violation of Section 5.16 of the Liquor Control Board Regulations.

PRIOR RECORD:

Licensee has been licensed since December 20, 2002, and has had one prior violation, to wit:

- Citation No. 04-0144. Fine \$500.00.
1. Committed simple assault and harassment. August 27, 2003

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, the record discloses that this citation represents Licensee's first violation of the type herein enumerated.

At the hearing, this court requested that Licensee Tia M. Tatters provide a copy of the affidavit which she represented was submitted to the Board where she verified that she is currently acting in the capacity as manager stating that she has no other employment and is devoting full time to the premises. Ms. Tatters has failed to submit such documentation. Official notice is taken that this documentation has not been submitted to the Board.

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For the foregoing reasons, a penalty shall be imposed in the amount of \$250.00 and Licensee's restaurant liquor license shall be suspended for a period of one day and continuing thereafter until Licensee Tia M. Tatters provides an affidavit to the Board with a copy to this court stating that she has no other employment and is devoting full time and attention to the licensed premises, or documentation supporting that she has appointed a Board-approved full time manager.

ORDER:

THEREFORE, it is hereby ordered that Tia M. Tatters, License Number R-AP-18132, pay a fine of \$250.00 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.

IT IS FURTHER ORDERED that License No. R-AP-18132 be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Monday, April 11, 2005, and continuing thereafter until Licensee Tia M. Tatters provides an affidavit to the Board with a copy to this court stating that she has no other employment and is devoting full time and attention to the licensed premises, or documentation supporting that she has appointed a Board-approved full time manager. Proof of the filing of this documentation shall be submitted to the address indicated below. Licensee's documentation must be approved by this Office in a Supplemental Order. **LICENSEE SHALL NOT HAVE THE AUTHORITY TO SELL, FURNISH AND/OR GIVE ALCOHOLIC BEVERAGES ON THE LICENSED PREMISES UNTIL A SUPPLEMENTAL ORDER IS ISSUED BY THIS OFFICE GRANTING SUCH AUTHORITY.**

Licensee is directed on Monday, April 11, 2005 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and 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/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

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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

Jurisdiction is retained to ensure compliance with this Order.

Dated this 11th day of February, 2005.

Roderick Frisk, J.

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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.