

Mailing Date: DEC 1 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1095
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-307012
	:	
J. SAIRE INC	:	
T/A PAT'S TAVERN	:	LID-10345
742 MONONGAHELA AVENUE	:	
GLASSPORT PA 15045-1625	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-2102	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement
Nadia L. Vargo, Esquire

For Licensee
Ex parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 3, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against J. Saire, Inc., T/A Pat's Tavern, License Number R-AP-2102 (hereinafter Licensee).

The citation contains two counts.

Count one of the citation charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §4-491(1), §4-492(2), and §4-493(16)], in that on February 25, April 1 and May 1, 2005, Licensee, by its servants, agents or employees, sold alcoholic beverages after its Restaurant Liquor License expired on May 31, 2004, and had not been renewed and/or validated.

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Count two of 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 February 25, April 1 and May 1, 2005, Licensee, by its servants, agents, or employees, operated the licensed establishment without a valid health permit or license, which expired on December 31, 2004.

The investigation which gave rise to the citation began on February 25, 2005 and was completed on May 2, 2005. The notice of violation letter was mailed to Licensee on May 13, 2005, and was received May 16, 2005.

An evidentiary hearing was held on this matter on October 18, 2005, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Counts One and Two

1. Licensee is a corporation located in Allegheny County, Pennsylvania, and holds Restaurant Liquor License Number R-AP-2102. (N.T. 4)
2. On Monday, May 31, 2004, Licensee's Restaurant Liquor License expired and was not renewed. (N.T. 7, Exhibit C-6)
3. On Friday, February 25, 2005, at 9:15 p.m., an enforcement officer entered the licensed premises and found Licensee's president rendering service of alcoholic beverages to four patrons. (N.T. 8-9)
4. The officer observed Licensee's expired Liquor License posted on the back bar in a frame and a health permit with an expiration date of December 31, 2004. (N.T. 9)
5. The officer purchased a 12-oz. bottle of Coors Light beer for \$1.75, observed sales of malt and brewed beverages and mixed drinks to other patrons, and purchased a second bottle of beer for \$2.00 (N. T.10)
6. At 10:00 p.m., the officer departed the premises with fourteen patrons remaining. (N.T. 10)
7. On Monday, February 28, and Thursday, March 10, 2005, the officer met with B.L.C.E. counsel regarding the investigation. (N.T. 10)

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8. On Friday, April 1, 2005, at 10:00 p.m., the enforcement officer returned to the licensed premises and found Licensee's president rendering service of alcoholic beverages to fourteen patrons and a disc jockey. (N.T. 10-11)

9. The officer purchased a bottle of Coors Light beer for \$2.25 and observed the expired Liquor License and health permit posted. (N.T. 11)

10. On Sunday, May 1, 2005, at 12:35 a.m., the enforcement officer again returned to the licensed premises and found a bartender rendering service of alcoholic beverages to four patrons. (N.T. 10-11)

11. The officer purchased a bottle of Coors Light beer for \$1.50 and observed other patrons purchasing beer and liquor and the expired license and health permit posted. (N.T. 11)

12. At 1:10 a.m., the officer departed the premises with five patrons remaining. (N.T. 12)

CONCLUSION OF LAW:

Counts One and Two -- Sustained as charged.

DISCUSSION:

At the hearing held on the matter the enforcement officer testified in detail that on February 25, April 1 and May 1, 2005, he visited the licensed premises, found it open and operating and purchased bottles of beer. No witness from the Allegheny County Health Department was called to testify. A certification from the Allegheny County Health Department that Licensee's health permit expired on December 31, 2004 and was not renewed was entered as Exhibit C-5. A certification from the Board that Licensee's Liquor License expired on May 31, 2004, and was not renewed was entered as Exhibit C-6.

Licensee did not appear at the hearing although duly notified of the place and time.

The general rule in Pennsylvania for administrative hearings is that hearsay evidence, properly objected to, is not competent to support a finding of fact, and that hearsay ordinarily inadmissible may support a finding of fact on if there is no objection, and it is corroborated by other competent evidence in the record. A finding based solely on inadmissible hearsay will not stand. Anderson v. Commonwealth Department of Public Welfare, 468 A.2d 1167 (1983); Walker v. Unemployment Compensation Board of Review, 367 A.2d 366 (1976).

I find the testimony of the officer credible. I can take administrative notice of the Board's records entered as Exhibit C-6. However, I cannot take administrative notice of the Allegheny County Health Department records entered as Exhibit C-5. Although Exhibit C-5 is hearsay, it was entered without objection. The officer's testimony that he observed Licensee's expired

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health permit posted during his three visits on February 25, April 1 and May 1, 2005 is sufficient corroboration.

As such, Counts One and Two are sustained as charged.

PRIOR RECORD:

Licensee has been licensed since December 18, 1979, and has two (2) prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 02-0500. Fine \$150.00. Waiver of hearing.

1. Operated the licensed establishment without a valid health permit or license.
September 9, 2002.

Citation No. 04-1713. Fine \$1,500.00. Licensee failed to pay fine and deferred suspension imposed with revocation to take effect in sixty days.

1. Sold alcoholic beverages after your restaurant liquor license expired and had not been renewed and/or validated.
August 28, 2004.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in count one of this case and 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 count two.

I take administrative notice that Licensee's liquor license expired on May 31, 2004, and that in case 04-1713 Licensee failed to pay the required \$1,500.00 fine within the required sixty day period causing his license to be revoked effective at 7:00 a.m. on Monday, December 12, 2005.

Licensee shall be treated as a repeat offender.

After due consideration of the circumstances giving rise to the citation and the licensee's citation history, the following fine will be imposed as the penalty in this case:

Counts One and Two -- Revocation of License.

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ORDER:

THEREFORE, IT IS HEREBY ORDERED that License Number R-AP-2102 issued to J. Saire, Inc., T/A Pat's Tavern, be REVOKED effective at 7:00 a.m. on Monday, December 12, 2005. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is CANCELLED.

Since the license is inactive, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 22nd day of November, 2005.

Robert F. Skwaryk, J.

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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.