

Mailing Date: AUG 29 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2086
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-314757
v.	:	
	:	LID - 49486
MCW, INC.	:	
T/A ALLEGHENY HOUSE	:	
253-255 ALLEGHENY STREET	:	
JERSEY SHORE, PA 17740-1422	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. H-AP-894	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas Ballaron, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 20, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MCW, INC., License Number H-AP-894 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102] in that on July 19, 25 and August 4, 2005, the licensed premises was not a bona fide hotel where the public may, for a consideration, obtain meals, in that Licensee, by its servants, agents or employes, failed to provide food upon request.

The investigation which gave rise to the citation began on July 14, 2005 and was completed on September 9, 2005; and notice of the violation was sent to Licensee by Certified Mail on September 19, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 13, 2006 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. Licensee(s) did not appear at the hearing, nor did anyone appear on its behalf. A citation hearing notice was sent to Licensee(s) at its address of record, 253-255 Allegheny Street, Jersey Shore, PA 17740-1422 by certified mail, return receipt requested and by first class mail on February 28, 2006. The notice set forth the date and time of the hearing as April 13, 2006 at 9:30 am, and the place of hearing as PA Department of Agriculture, 2130 County Farms, Road, Montoursville, PA 17754-9685.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On July 19, 2005 an officer of the Bureau entered the licensed premises at approximately 5:10 p.m. Upon entry he observed a barmaid rendering service to approximately four patrons who had malt or brewed beverages in their possession (N.T. 7-8).

2. The officer purchased a beer (N.T. 8).

3. At approximately 5:33 p.m. the officer requested a menu from the barmaid. The barmaid stated that they did not have any food at that time other than potato chips. She stated that the cooks were injured, and she did not know when they would be back or if they would be back (N.T. 8).

4. On July 25, 2005 at 6:27 p.m. the officer entered the licensed premises where he observed the same barmaid that he had had contact with on his original visit. He observed that there were six patrons inside the licensed premises consuming alcoholic beverages (N.T. 9-10).

5. At 6:35 p.m. the officer asked the barmaid if the cooks were back. The barmaid indicated that the cooks were not there. She also indicated that she didn't know whether they were going to come back. She also indicated this time there was no menu available (N.T. 10).

6. On August 4, 2005 the officer entered the premises at 7:45 p.m. At that time he observed a male bartender rendering service to approximately 15 patrons who were consuming alcoholic beverages. The officer made contact with the bartender and asked to see a menu. The bartender advised him that the premises did not have a menu and proceeded to give him directions to an establishment that had food several blocks down the road (N.T. 11).

CONCLUSIONS OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since July 31, 2002, and has had six prior violations:

Citation No. 03-0208. Fine \$500.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets). September 18, 2002.

Citation No. 03-0347. Fine \$1,850.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 p.m. January 1, 2003.
2. Permitted dancing to a disc jockey until 2:15 a.m. January 1, 2003.
3. Sales to a visibly intoxicated person. December 31, 2002 and January 1, 2003.

Citation No. 03-0376. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 31, 2002.

Citation No. 03-2031. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 11 and 25, 2003.

Citation No. 04-1170. Fine \$750.00 and 1 day suspension. Fine not paid and license suspended 2 additional days and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. November 20, 26 and December 11, 2003.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (cards). March 13, 2004.

Citation No. 05-0090. Fine \$400.00.

1. Not a bona fide hotel in that bedrooms maintained for the accommodation of guests are insufficient in number and/or inadequately equipped. December 29, 2004.

2. Failed to label beer taps properly. December 29, 2004.
3. Failed to keep records on the licensed premises. December 29, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be suspension of license for a period of one day and continuing thereafter until Licensee submits written certification that the licensed premises is being operated as a bona fide hotel which maintains a kitchen in which food is regularly prepared for the public, and a current menu, and continuing thereafter until the certification is reviewed and approved and the suspension terminated by further order.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the hotel liquor license of MCW, INC., License No. H-AP-894 be suspended for a period of one day(s) **BEGINNING** at 7:00 a.m. on Monday, November 13, 2006 and **ENDING** at 7:00 a.m. on Tuesday, November 14, 2006, and further that said license remain suspended until: (1) Licensee has forwarded a certification verifying that the licensed premises is being operated as a bona fide hotel which maintains a kitchen in which food is regularly prepared for the public and having a current menu; and (2) said certification has been approved and the suspension terminated by further Order.

Licensee is directed on November 13, 2006 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.

LICENSEE MAY NOT RESUME OPERATION OF THE LICENSED PREMISES UNTIL FURTHER ORDER BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 11th day of August, 2006.

Daniel T. Flaherty, Jr., J.

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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.

CERTIFICATION

_____ does hereby certify that he is the _____ of MCW, Inc. holding Pennsylvania Liquor License H-AP-894 with its licensed place of business at 253-255 Allegheny Street, Jersey Shore, PA; and

The aforementioned licensed premises is being operated as a bona fide hotel in which food is regularly prepared for the public; and

Attached hereto is a menu setting forth the food that is available to be sold to the public.

I/We, the above Licensee(s) [or authorized officer(s) thereof], under penalty of law [18 Pa.C.S. §4904], relating to unsworn falsification to authorities] acknowledge that I/We are signing and executing this document as the authorized act and deed of the Licensee. I/We certify that the foregoing is true and correct.

SIGNATURE

DATE

Original to be sent to: Office of Administrative Law Judge, Pennsylvania Liquor Control Board, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg PA 17110-9661.

One copy of certification to be sent to: Thomas Ballaron, Assistant Counsel, Bureau of Liquor Control Enforcement, Pennsylvania State Police, 3655 Vartan Way, Harrisburg, Pennsylvania 17110.