

Mailing Date: NOV 09 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2225
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-310616
v.	:	
	:	LID - 26395
INDIAN HEAD INN, INC.	:	
T/A WASHINGTON HOTEL	:	
1 E. MAIN STREET	:	
P.O. BOX 695	:	
ELIZABETHVILLE, PA 17023-0695	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. H-AP-SS-EHF-325	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Michael L. Garnick, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 3, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against INDIAN HEAD INN, INC., License Number H-AP-SS-EHF-325 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 5.51(a) of the Liquor Control Board Regulations [40 Pa. Code §5.51(a)] in that during the periods January 21 through 29, February 25 through March 5, March 25 through April 2, April 8 through 16, May 20 through 28, June 17 through 25, July 15 through 23, July 29 through August 6 and September 2 through 10, 2005, Licensee, by its servants, agents or employes, failed to clean coils, tap rods and connections at least once every seven days.

The second count charges Licensee with violation of Sections 102 and 461(c) of the Liquor Code [47 P.S. §1-102 and 4-461(c)] in that on September 2 and 23, 2005, the licensed premises was not a bona fide hotel in that bedrooms maintained for the accommodations of guests were insufficient number and/or inadequately equipped.

The investigation which gave rise to the citation began on May 2, 2005 and was completed on September 23, 2005; and notice of the violation was sent to Licensee by Certified Mail on October 7, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 18, 2006 in the Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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:

COUNTS 1 AND 2

1. On September 2, 2005 an officer of the Bureau entered the licensed premises at 2:20 p.m. Upon entry he found four patrons present in the bar. He identified himself to the wife of Licensee's president, Mrs. Darlene Garnick. He informed her that he was there for the purpose of completing a routine inspection (N.T. 14).

2. As part of the routine inspection the officer did a complete physical inspection of the bar room area. In regards to the premises draft beer system the officer was told by Mrs. Garnick that it was currently being cleaned in house by Mr. Garnick. However, she was unable to produce any recordkeeping on cleaning of the coils. The officer included in a request for records that records of coil cleaning be provided (N.T. 15).

3. As part of the physical inspection the officer traveled to the second and third floors of the licensed premises in order to examine bedrooms. On the second floor the officer found five separate bedrooms. None of these rooms was properly furnished with at least a bed and other required furniture such as dresser drawers or other furniture making them habitable to the public. In many of these five rooms the drywall and plaster had been torn off the walls. The officer did find two fully equipped bathrooms on the second floor; however, none of the sinks or toilets in either of these bathrooms were operable due to the fact that the water had been turned off to both the second and third floors. The officer verified this by attempting to operate the fixtures (N.T. 16-17).

4. The officer traveled to the third floor of the premises where he found a total of seven rooms, two of which were habitable with mattresses and box springs set up on bed frames and the mattress having sheets on them. There were also dressers located in these two rooms. The remaining five rooms on the third floor had the wallboard torn off from the walls and ceilings and personal belongings were strewn throughout the rooms (N.T. 17).

5. The officer also found that the third floor contained two full bathrooms. However, neither were usable due to the fact that the water was shut off to the second and third floors.

6. The officer made arrangements for a return visit at which time he would again look at the hotel rooms and the recordkeeping (N.T. 17-18).

7. On September 23, 2005 the officer returned to the licensed premises to do a follow up inspection from his previous visit (N.T. 18).

8. On this second visit, Mrs. Garnick provided the officer with a spiral ring 2005 calendar which had handwritten notations on certain dates indicating that either tap cleaning or fryer cleaning had taken place. In examining the markings for tap cleaning the officer found nine periods from January of 2005 to September of 2005 in which coils had been cleaned in an eight day period rather than a seven day period, to wit: Friday January 21, 2005 to Saturday, January 29, 2005, Friday, February 25, 2005 to Saturday, March 5, 2005, Friday, March 25, 2005 to Saturday, April 2, 2005, Friday, April 8, 2005 to Saturday, April 16, 2005, Friday, May 20, 2005 to Saturday, May 28, 2005, Friday, June 17, 2005 to Saturday, June 25, 2005, Friday, July 15, 2005 to Saturday, July 23, 2005, Friday, July 29, 2005 to Saturday, August 6, 2005 and Friday, September 2, 2005 to Saturday, September 10, 2005 (N.T. 19-20).

9. On his second visit on September 23, 2005 the officer again toured the second and third floors of the licensed premises. On the second floor he found that a few rooms had been made up with a single sheet or blanket over top of a bare mattress and box spring. The mattresses and box springs were on bed frames. Two of these rooms had been cleaned up to be made presentable and at least one closet or chest of drawers was located in each room for clothing and storage making them habitable. He further inspected the common bathroom for these two rooms and found again that the water fixtures were not operable. Mrs. Garnick explained that there was no water available on the second floor due to a leak in the water line. The officer tried the fixtures and found that there was no water flow (N.T. 20-21).

10. The officer proceeded to the third floor where a total of four rooms with beds were found. At least one item of furniture or closet space was available for clothing or storage. All four of the rooms had been cleaned to be presentable. He again toured the common bathrooms for these four rooms and found the water lines for the shower and commode were inoperable.

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since November 14, 1990, and has had four prior violations:

Citation No. 92-1207. Fine \$400.00.

1. Sales to a visibly intoxicated person.

Citation No. 94-1818. Fine \$60.00.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price.

Citation No. 96-2228. Fine \$700.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machine, sports pool an sign up books).

Citation No. 97-2660. Fine \$150.00.

1. Purchased malt or brewed beverages on credit.

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.

With respect to Count No. 2 no suspension of license with thereafter conditions will be imposed since to do so would impede Licensee from obtaining an exemption from the requirement to maintain rooms for hotel liquor licensees such as the Licensee in this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$100.00 fine
Count 2 - \$150.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee INDIAN HEAD INN, INC., 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.

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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 pending final resolution of the penalty in this matter.

Dated this 26th day of October, 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.