

Mailing Date: MAY 18 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2244
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-319572
v.	:	
	:	LID - 52603
TAL BROTHERS, INC.	:	
T/A CAFÉ FAMIGLIA	:	
1557 MAIN ST.	:	
BLAKELY	:	
PECKVILLE, PA 18452-2016	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-17517	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Earl Talarico
Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 1, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Tal Brothers, Inc., t/a Café Famiglia (Licensee), License Number R-AP-SS-17517.

The citation¹ charges Licensee with a 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)]. The charge is that on October 2, 2005, Licensee, by servants, agents or employees, sold alcoholic beverages after its Restaurant Liquor License expired on September 30, 2005, and had not been renewed and/or validated.

An evidentiary hearing was conducted on March 30, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Manager, Mr. Earl Talarico.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on October 2, 2005 and completed it on October 3, 2005. (Commonwealth Exhibit No. C-2, N.T. 18)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on October 13, 2005. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-2, N.T. 18)
3. Licensee's Restaurant liquor license expired on September 30, 2005. (N.T. 5)
4. On that same date at 4:45 p.m., Licensee filed for Chapter 11 bankruptcy. (N.T. 6)
5. Licensee's representative was told by Licensee's bankruptcy attorney that Licensee was protected by Federal Bankruptcy Laws. Licensee was open and in operation selling alcoholic beverages on October 2, 2005, with the understanding that he was doing so lawfully pursuant to counsel's advice. The following Monday, October 3, 2005, Licensee was granted authorization to sell alcoholic beverages. (N.T. 10-11)

1. Commonwealth Exhibit No. C-3, N.T. 18.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

I must admit, I am far from an expert in Bankruptcy Law. With the knowledge I do have, I see only one statutory basis upon which to support the advice given Licensee that Licensee could continue to sell alcoholic beverages after the license expired because the bankruptcy filing of September 30, 2006, authorized Licensee to continue to do so.

That provision is the automatic stay of 11 U.S.C.A. §362. Sub-section (a) specifically lists eight distinct classifications to which the automatic stay applies. Sub-section (b) provides for a long list of circumstances in which the automatic stay does not apply. Thus, if the action in question does not fall into any of the enumerated types in sub-section (a) or clearly falls into one listed in sub-section (b), no automatic stay applies.

I see nothing specific in sub-sections (a) or (b) that might apply to the situation at hand. I suppose a weak argument could be made that paragraph (a)(3), regarding exercising control over property of the bankruptcy estate, might have some application. However, a liquor license is not property as between a licensee and the Pennsylvania Liquor Control Board [47 P.S. §4-468(d)]. Further, other than the passage of time, a license expiration occurs automatically, without action on the part of any government agency.

Since Licensee's Bankruptcy Petition was filed prior to the violation in question, the automatic stay is not applicable to this proceeding; the violation constitutes post-petition conduct. If Licensee's Bankruptcy attorney has some relevant provision of law or precedent, that is likely to alter this decision, I am willing to address it upon Application for Reconsideration.

PRIOR RECORD:

Licensee has been licensed since April 2, 2004, and has had one prior violation:

Adjudication No. 05-0162. Fine \$100.00.
Operated the licensed establishment without a
valid health permit or license.
January 4, 2005.

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.

I impose a three days suspension.

ORDER:

Imposition of Suspension

THEREFORE, it is hereby ordered that the Restaurant liquor license of Tal Brothers, Inc., t/a Café Famiglia, License No. R-AP-SS-17517, be suspended for a period of three days, **BEGINNING** at 7:00 a.m., on Monday, July 10, 2006, and **ENDING** at 7:00 a.m., on Thursday, July 13, 2006.

Licensee is directed on Monday, July 10, 2006, at 7:00 a.m., to place a 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 is authorized on Thursday, July 13, 2006, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 8th day of May, 2006.

Felix Thau, A.L.J.

pm

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.