

Mailing Date: AUG 22 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2809
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-320773
v.	:	
	:	LID - 51293
PROSPECT STREET CAFÉ, INC.	:	
23 S. PROSPECT ST.	:	
NANTICOKE, PA 18634-2319	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-10788	:	

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
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 17, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Prospect Street Café, Inc. (Licensee), License Number R-AP-SS-10788.

This citation¹ contains two counts.

The first count 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 November 28, 2005, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when its Restaurant Liquor License was suspended at Citation No. 04-1736.

The second count charges Licensee with a violation of Section 15.62(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa Code §15.62(a)]. The charge is that on November 28, 2005, Licensee, by servants, agents or employes, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

An evidentiary hearing was conducted on July 17, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have representation at the hearing.

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 24, 2005 and completed it on December 6, 2005. (Commonwealth Exhibit No. C-1, N.T. 8)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on December 8, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

Count Nos. 1 and 2:

3. Pursuant to Adjudication No. 04-1736, Licensee was fined \$250.00. The fine was not paid and Licensee's liquor license was suspended for a period of one day, beginning at 7:00 a.m., Monday, November 28, 2005 and continuing thereafter until the fine was paid. Pursuant to Adjudication No. 04-1357, Licensee was fined \$250.00. The fine was not paid and Licensee's liquor license was suspended for a period of one day, beginning at 7:00 a.m., Tuesday, November 29, 2005 and continuing thereafter until the fine was paid.

1. Commonwealth Exhibit No. C-2, N.T. 8.

4. A Bureau Enforcement Officer visited the premises on November 28, 2005, at 2:45 p.m. Licensee was open and in operation selling alcoholic beverages. No placard of suspension was posted. The Officer identified himself to Licensee's staff and advised the subject license was under suspension. Licensee's staff believed the suspension was to begin the following day. The Officer finally was able to convince Licensee's staff the suspension was effective on the date in question.

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since September 3, 2003, and has had eight prior violations:

Adjudication No. 03-1963. Fine \$100.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

Issued worthless checks in payment for malt or brewed beverages.
September 20, 2003.

Adjudication No. 04-0810. Fine \$1,700.00.

1. Issued worthless checks in payment for malt or brewed beverages.
February 27, 2004.
2. Permitted lewd, immoral or improper entertainment.
April 15, 2004.
3. Permitted entertainers to contact or associate with patrons.
April 15, 2004.
4. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (tickets).
April 15, 2004.

Adjudication No. 04-1227. Fine \$300.00.

1. Paid for purchases of malt or brewed beverages with other than cash or licensee's check.
January 9, 16, 23, 30, 31 and March 17, 2004.
2. Issued worthless checks in payment for malt or brewed beverages.
March 10 and 12, 2004.

Adjudication No. 04-1357. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.
July 24, 2004.

Adjudication No. 04-1736. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.
September 19, 2004.

Adjudication No. 05-0791. Fine \$250.00.

Issued worthless checks in payment for malt or brewed beverages.
February 14, 18, 22, March 4, 11, 14, 17 and 18, 2005.

Adjudication No. 05-1612. Fine \$600.00.

1. Issued worthless checks in payment for malt or brewed beverages.
On 10 dates from March 18 through July 6, 2005.
2. Failed to keep on the licensed premises and/or provide an authorized employe of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.
July 11, 2005.

Adjudication No. 05-2378. Fine \$350.00.

Issued worthless checks in payment for malt or brewed beverages.
July 6 and 18, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 1 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 No. 2 in this case.

As Licensee has decided not to come to the hearing, I merge Count Nos. 1 and 2 and impose a \$1,000.00 fine and a 1 day suspension.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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, 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, Pennsylvania 17110-9661

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant liquor license of Prospect Street Café, Inc., License No. R-AP-SS-10788, be suspended for a period of one day, **BEGINNING** at 7:00 a.m., on Monday, October 2, 2006, and **ENDING** at 7:00 a.m., on Tuesday, October 3, 2006.

Licensee is directed, on Monday, October 2, 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 Tuesday, October 3, 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 31st day of July, 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.