

Mailing Date: OCT 16 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0889
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-325962
v.	:	
	:	LID - 6156
PATRICK J. MCGONAGLE	:	
BARBARA A. MCGONAGLE	:	
T/A AMERICAN HOTEL	:	
KRESGEVILLE, PA 18333	:	
	:	
	:	
MONROE COUNTY	:	
LICENSE NO. H-AP-SS-858	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Craig Strong, Esquire

For Licensee  
Patrick McGonagle, PRO SE

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on April 24, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PATRICK J. & BARBARA A. MCGONAGLE, License Number H-AP-SS-858 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensees 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 28, 2006, Licensees, by their servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when their Hotel Liquor License was suspended at Citation No. 04-2136.

The second count charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] in that on February 28, 2006, Licensee, by its 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.

The investigation which gave rise to the citation began on January 24, 2006 and was completed on March 1, 2006; and notice of the violation was sent to Licensee by Certified Mail on March 14, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 24, 2006 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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 January 17, 2006, the Office of Administrative Law Judge issued a Second Supplemental Order at Citation No. 04-2136 which suspended Licensees' liquor license for a period of one day beginning February 27, 2006 and continuing thereafter until a \$300.00 fine was paid (N.T. 10 and Exhibit C-3).
2. Licensee paid the \$300.00 fine, and, on March 1, 2006 the Office of Administrative Law Judge issued a Third Supplemental Order vacating Licensee's continuing suspension and ordering that Licensee may resume operation of its licensed business effective at 12:00 p.m. Wednesday, March 1, 2006 (N.T. 10 and Exhibit C-4).
3. On February 27, 2006 at 3:30 p.m. an officer of the Bureau went to the licensed premises. He found the premises was closed for business, and the suspension placard was properly posted in the window (N.T. 11).
4. On February 28, 2006 at 3:48 p.m. the officer again arrived at the licensed premises and found it open for business. The beer lights were lit. The front door was unlocked, and there was no suspension placard posted anywhere on the premises (N.T. 11).
5. The officer entered the premises at 3:49 p.m. just after a male patron had entered. When the officer was inside the licensed premises he saw the patron being served a 12 ounce bottle of Miller Lite beer by Licensee, Pat McGonagle. He was charged \$1.75 for the purchase. The sale was rung up and the money placed in the cash register (N.T. 11-12).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since September 22, 1976, and has had four prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 95-3044. Fine \$150.00.

1. Co-Licensee Patrick J. McGonagle consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.

Citation No. 97-2416. Fine \$50.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 04-2136. Fine \$300.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (block pools). November 9, 2004.

Citation No. 05-1972. Fine \$250.00.

1. Patrick J. McGonagle, consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages. August 28, 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 1 of this case.

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 Count 2 of this case.

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

Count 1 - \$1,000.00 fine  
Count 2 - \$ 250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee PATRICK J. & BARBARA J. MCGONAGLE, pay a fine of \$1,250.00 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 3<sup>rd</sup> day of October, 2007.

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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.**