

Mailing Date: FEB 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0978
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-325471
v.	:	
	:	LID - 12038
GIP, INC.	:	
T/A BARNWOOD INN	:	
1129 LUZERNE STREET	:	
SCRANTON, PA 18504-2561	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-5910	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig Strong, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 8, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against GIP, INC., License Number R-AP-SS-5910 (hereinafter "Licensee").

The citation contains two counts.

The first 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 March 13 and 17, 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 second count charges Licensee 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 March 17, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when your Restaurant Liquor License was suspended at Citation No. 05-1324.

The investigation which gave rise to the citation began on January 18, 2006 and was completed on March 28, 2006; and notice of the violation was sent to Licensee by Certified Mail on April 4, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 25, 2006 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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, 1129 Luzerne Street, Scranton, PA 18504-2561 by certified mail, return receipt requested and by first class mail on September 7, 2006. The notice set forth the date and time of the hearing as October 25, 2006 at 9:30 a.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

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 this office issued an Adjudication at Citation No. 05-1324. Part of the penalty imposed in connection with that Adjudication was suspension of Licensee's liquor license for a period of one day beginning at 7:00 a.m. on Monday, March 13, 2006 and ending at 7:00 a.m. on Tuesday, March 14, 2006, and continuing thereafter until Licensee has forwarded a certification stating that it has notified the Pennsylvania Liquor Control Board of a change in its officers, directors, stockholders and manager (N.T. 7 and Exhibit C-5).

2. On March 23, 2006 this office issued an Opinion and Order upon Licensee's submission of a certification approving a certification submitted by Licensee and vacating the thereafter conditions of suspension effective 7:00 a.m. on March 24, 2006 (N.T. 7 and Exhibit C-6).

3. On March 17, 2006 an officer of the Bureau visited the licensed premises. He arrived at approximately 8:30 p.m. (N.T. 9).

4. When the officer arrived the premises was open for business. There were lighted signs in the windows. He entered the premises and found that the premises was open and patrons were inside (N.T. 9-10).

5. Upon entry, the officer found Mark Mehall, the new corporate officer for Licensee corporation tending bar. The officer ordered and was served one lager draft beer for which he was charged \$1.50. Later, the officer was served a second glass of beer by a female bartender (N.T. 10).

6. The officer did not find any notice of suspension posted on the front or the back door of the premises on March 17, 2006 (N.T. 11).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since October 21, 1987, and has had six prior violations:

Citation No. 90-2497. Fine \$350.00 and revocation of Sunday Sales Permit.

1. Furnished false information in obtaining a Sunday Sales Permit.

Citation No. 91-1855. Fine \$1,500.00.

1. Sunday sales after 2:00 a.m.
2. Sales to a visibly intoxicated person.

Citation No. 92-0499. Fine \$500.00 and 3 days suspension.

1. Sales to a visibly intoxicated person.

Citation No. 05-0355. Fine \$650.00.

1. Operated the licensed establishment without a valid health permit or license. January 10, 2005.
2. Not a bona fide restaurant in that food items, eating utensils and dishes were insufficient and/or failed to provide food upon request. January 10, 2005.
3. Failed to clean coils, tap rods and connections at least once every 7 days. December 30 through January 10, 2005.
4. Failed to keep records on the licensed premises. January 10, 2005.

Citation No. 05-1324. Fine \$1,500.00 and 1 day suspension with thereafter conditions.

1. Issued worthless checks in payment for malt or brewed beverages. March 8, 11, 18, 22, 24, 28, 31, April 2, 8 and 20, 2005.
2. Failed to notify the Board within 15 days of a change of officers. April 1, 2005.
3. Failed to notify the Board within 15 days of a change of manager.

Citation No. 05-2352. Fine \$1,200.00. Fine not paid and license suspended 2 days and thereafter until fine paid.

1. Sales after the license expired and had not been renewed and/or validated. October 6, 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 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 2 of this case.

Counts 1 and 2 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be suspension of license for a period of four days.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of GIP, INC., License No. R-AP-SS-5910 be suspended for a period of four days. However, the suspension period is deferred pending reactivation of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the dates for suspension.

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

Dated this 8th day of February, 2007.

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.