

Mailing Date: OCT 1 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1355
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-329099
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 June 5, 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 three 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 April 24, 26 and 29, 2006, Licensee, by its servants, agents or employees, 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 April 29, 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. 05-2352.

The third count charges Licensee with violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations [40 Pa. Code §5.41] in that on April 29, 2006, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on February 28, 2006.

The investigation which gave rise to the citation began on March 13, 2006 and was completed on May 3, 2006; and notice of the violation was sent to Licensee by Certified Mail on May 9, 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. No one appeared at the hearing on behalf of Licensee. 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, 2 AND 3

1. The health license for the licensed premises expired on February 28, 2006; and as of October 25, 2006 it had not yet been renewed (N.T. 13).
2. On March 18, 2006, at Citation No. 05-2352, Administrative Law Judge Thau issued an Order upon Licensee's failure to pay a fine in the amount of \$1,200.00. The Order required that Licensee's restaurant liquor license be suspended for a period of two days beginning at 7:00 a.m. on Monday, April 24, 2006 and ending at 7:00 a.m. on Wednesday, April 26, 2006, and continuing thereafter until the fine of \$1,200.00 had been paid (N.T. Exhibit C-5).
3. On May 3, 2006 at Citation No. 05-2352, Administrative Law Judge Thau issued a Supplemental Order and Order Upon Payment of Fine indicating that Licensee, on May 2, 2006 had submitted a check in the amount of \$1,200.00 in accordance with the Supplemental Order dated March 18, 2006 and vacated the thereafter conditions effective at 11:00 a.m. on Wednesday, May 3, 2006 (N.T. Exhibit C-6).

4. On April 24 and 26, 2006 an officer of the Bureau proceeded to the licensed premises and found the premises to be closed and no lights were on (N.T. 9).

5. On each of the visits of April 24, 2006 and April 26, 2006 the officer did not observe a notice of suspension placard posted anywhere on the licensed premises (N.T. 9).

6. On April 29, 2006 the officer proceeded to the licensed premises where he observed the lights on (N.T. 9-10).

7. Upon entry the officer observed four patrons drinking bottled beer. The officer ordered a mixed alcoholic drink consisting of Absolute vodka and club soda. He was served the drink by a female bartender who charged him \$3.00. The money was placed in the cash register (N.T. 9-10).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 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 Counts 1 and 3 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.

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

- Count 1 - \$ 200.00 fine
- Count 2 - \$1,250.00 fine and one day suspension
- Count 3 - \$ 250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee GIP, INC., pay a fine of \$1,700.00 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.

IT IS FURTHER ORDERED that the restaurant liquor license (including all permits) of GIP, INC., License No. R-AP-SS-5910 be suspended for a period of one day. 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.

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 13th day of September, 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.**