

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. 06-1945
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-334978
v.	:	
	:	LID - 53602
HANNA & AXEL, INC.	:	
T/A THE DUTCHMAN	:	
338 S. FRONT ST.	:	
WRIGHTSVILLE, PA 17368-1614	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-SS-19392	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 24, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against HANNA & AXEL, INC., License Number R-AP-SS-19392 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102] in that on July 8, 10 and 12, 2006, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employees, failed to provide food.

The investigation which gave rise to the citation began on June 22, 2006 and was completed on July 24, 2006; and notice of the violation was sent to Licensee by Certified Mail on July 28, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 9, 2006 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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, 338 S. Front St., Wrightsville, PA 17368-1614 by certified mail, return receipt requested and by first class mail on September 21, 2006. The notice set forth the date and time of the hearing as November 9, 2006 at 11:00 a.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110.

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:

During the period from July 8, 2006 through July 12, 2006 the licensed premises had its electric service cut off and was operating by generator. Because the generator could not produce enough electric current, Licensee did not operate its kitchen. Consequently, no food was provided during that period. However, the licensed premises was closed on July 9 and 11 of 2006 (N.T. 9).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since February 10, 2005, and has had two prior violations:

Citation No. 05-1996, 05-2123 & 05-2186, consolidated. Fine \$500.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. April 6, 27, May 4, 11, June 1 and July 20, 2005.
2. Transported malt or brewed beverages without a license. July 7, 15, 23, 29 and August 4, 2005.
3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets). September 2 and 3, 2005.

Citation No. 06-0027. Fine \$300.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Loudspeakers or devices whereby music could be heard outside. November 12 and 26, 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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee HANNA & AXEL, INC., pay a fine of \$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 13th day of September, 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.