

Mailing Date: MAR 11 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2160
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-337807
	:	
DATONA CORPORATION	:	
255 W. QUEEN LANE	:	LID - 10170
PHILADELPHIA PA 19144-4028	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-1777	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 29, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Datona Corporation, License Number R-AP-1777 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, March 8, 2007, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation contains two counts.

The first count charges Licensee with violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41, in that on August 11 and 15, 2006, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2006.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that on August 11, 2006, Licensee, by its servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on August 11, 2006 and was completed on August 15, 2006. By letter dated August 24, 2006, the Licensee was notified of the violations. The letter was sent by certified mail, return receipt requested. The mailing was signed as received. The Bureau of Enforcement issued a citation to the licensed premises dated September 29, 2006. The mailing was sent by certified mail, return receipt requested. The mailing was signed as received on October 2, 2006 (N.T. 10-12 and Exhibits B-1 and B-2).

2. A citation hearing notice was sent to the licensed premises by first class mail and certified mail, return receipt requested by the Office of Administrative Law Judge on January 19, 2007. The mailing was returned unclaimed (Exhibits B-1 and B-2).

3. Officer J. Kohler is employed by the Bureau and at the time of hearing had been so employed for approximately three years. The officer was assigned to conduct a routine inspection of the licensed premises. On August 11, 2006, the officer visited the licensed premises. She introduced herself to a female bartender and explained the nature of her visit. She then conducted an inspection of the premises. The officer noted that the health license, which was located behind the bar, was expired. The officer asked the bartender if there was another license and she stated that she did not know (N.T. 6-7).

4. Officer Kohler explained to the bartender that she was looking for records for the past years. Specifically the officer was looking for beer and liquor invoices. The bartender indicated that she did not have access to those records (N.T. 7).

5. The officer also requested to see what foods the premises had available. The officer saw six to eight cans, which she found inadequate for sufficient food service (N.T. 7).

6. The bartender contacted Mr. Elton Perry who claims to be the manager. Mr. Perry indicated that he could not come to the premises, but that he would meet the officer at some future date. They agreed to meet on August 15, 2006. Mr. Perry showed the officer records that had been unavailable on the August 11, 2006. He was able to show the officer food in the basement area. He indicated that the food had been there, but the bartender did not know about it (N.T. 8).

7. Prior to going back to the premises on August 15, 2006, the officer called Licenses and Inspections to confirm whether or not the premises had a current health license. Certified records from the city of Philadelphia dated August 29, 2006 indicate that the license expired on April 30, 2006 and that there was no license at the premises on August 11, 2006 or August 15, 2006 (N.T. 8, 11-12 and Exhibit B-3).

#### CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On August 11 and 15, 2006, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2006, in violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41.

Count No. 2 - On August 11, 2006, Licensee, by its servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

#### PRIOR RECORD:

Licensee has been licensed since October 31, 006, and has a record of prior violations as follows:

Citation No. 98-1476. \$300.00 fine.

1. Fortified, adulterated and/or contaminated liquor.

Citation No. 01-0991. \$1,000.00 fine, reimbursement of \$83.91 and Verification conditions corrected.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.  
March 21, 2001.
2. Not a bona fide restaurant in that food items were insufficient.  
March 21, 2001.
3. Unlawfully possessed liquor obtained from sources other than Pennsylvania State Stores.  
March 21, 2001.

Citation No. 02-1914. \$500.00 fine.

1. Not a bona fide restaurant in that food items and dishes were insufficient.  
October 7, 2002.

Citation No. 05-2535. \$600.00 fine.

1. Failed to keep records on the licensed premises.  
August 31, 2005.
2. Operated the licensed establishment without a valid health permit or license.  
August 31, 2005.
3. Failed to notify the Board within 15 days of a Change of Manager which occurred on March 14, 2005.

DISCUSSION:

According to the records of the Liquor Control Board, the license is currently inactive. After a review of the Licensee's prior record, a moderate monetary penalty shall be imposed. Although the Bureau officer elected not to cite Licensee in that they had food in the basement, the Licensee should be aware that food in the basement of which the staff is unaware does not qualify the licensed premises as a bona fide restaurant.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$150.00.
- Count No. 2 - \$150.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Datona Corporation, License Number R-AP-1777, pay a fine of Three Hundred Dollars (\$300.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 26<sup>th</sup> day of February, 2008.

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Tania E. Wright, J.

**NOTE:** 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.

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Detach Here and Return Stub with Payment

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, PA 17110-9661