

Mailing Date: APR 09 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2331
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-339381
v.	:	
	:	LID - 32400
VICTORIA INNS, INC.	:	
RTE. 315	:	
PITTSTON, PA 18640	:	
	:	
	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. H-AP-SS-5616	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 25, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Victoria Inns, Inc. (Licensee), License Number H-AP-SS-5616.

The citation¹ charges Licensee with a 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)]. The charge is that on September 1 and 5, 2006, Licensee, by servants, agents or employees, sold alcoholic beverages after its Hotel Liquor License expired on August 31, 2006, and had not been renewed and/or validated.

An evidentiary hearing was conducted on March 14, 2007 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on January 26, 2007, to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was signed for on January 29, 2007.
2. On January 26, 2007, I issued a Pre-Hearing Order directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing.
3. The Bureau began its investigation on September 1, 2006 and completed it on September 5, 2006. (N.T. 8)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on September 14, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)
5. On September 1, 2006, a Bureau Enforcement Officer arrived at the premises at about 9:00 p.m. Licensee was open and in operation selling alcoholic beverages. The Officer displayed his credentials. He was advised Licensee had obtained authority to operate. The Officer indicated he would return several days later. (N.T. 9-12)
6. The Officer was accompanied by a second Officer on September 5, 2006. The two went to the subject premises arriving about 4:00 p.m. Licensee was open and in operation selling alcoholic beverages.

1. Commonwealth Exhibit No. C-2, N.T. 8.

7. I take Official Notice Licensee had no authority to operate on the dates charged and its license became active effective October 2, 2006. (N.T. 14)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

At 10:00 a.m., on the scheduled hearing date, I contacted Corporate Officer Victoria Popple via cell phone. She advised she was driving to Philadelphia and forgot completely about the hearing. She further advised that an attorney was representing her and that she had given that attorney all of the paperwork. I reviewed the file and found no entry of appearance form or no indication Licensee was represented by counsel. I advised Ms. Popple that I was going to proceed with the hearing ex-parte. (N.T. 1-7)

PRIOR RECORD:

Licensee has been licensed since October 5, 1993, and has had two prior violations (Commonwealth Exhibit No. C-3, N.T. 15):

Adjudication No. 04-1797. Fine \$1,100.00.
Sales after your Hotel Liquor License expired on
August 31, 2004 and had not been renewed and/or
validated.
September 23, 2004.

Adjudication No. 05-0167. Fine \$200.00. Fine not paid and
license suspended 1 day and thereafter until fine paid.
Sold and/or served an unlimited or indefinite
amount of alcoholic beverages for a fixed price.
December 31, 2004.

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 this case.

I impose a \$1,500.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,500.00 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, 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 to:

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

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 2nd day of April, 2007.

Felix Thau, A.L.J.

pm

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.