

Mailing Date: SEP 24 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2353,
LIQUOR CONTROL ENFORCEMENT	:	06-2598 &
	:	06-3015
	:	(as consolidated)
	:	
	:	
	:	Incident No. W06-335341
v.	:	W06-335671
	:	W06-339017
	:	
	:	LID - 49486
MCW, INC.	:	
T/A ALLEGHENY HOUSE	:	
253-255 ALLEGHENY ST.	:	
JERSEY SHORE, PA 17740-1422	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. H-AP-894	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of Citation No. 06-2353 that was issued on October 12, 2006, Citation No. 06-2598 issued on November 22, 2006 and Citation No. 06-3015 issued on January 11, 2007 by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MCW, INC., License Number H-AP-894 (hereinafter "Licensee").

On February 26, 2008, counsel for the Bureau filed a Motion to Consolidate Citation Nos. 06-2353, 06-2598, 06-3015 under Citation No. 06-2353. The Motion was granted.

The citation contains six counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 7101 of the Tax Reform Code of 1971 [72 P.S. §7101] in that Licensee, violated the Tax Reform Code of 1971, in that it failed and/or refused to file sales tax returns with the Commonwealth of Pennsylvania, Department of Revenue, for the period January 21, 2006 through July 21, 2006.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on July 8, August 26, November 4 and December 3, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated female patron and one visibly intoxicated male patron.

The third count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] in that on July 8, 9, August 20, 25, 26, September 16, October 29, November 4, 18 and 25, 2006, the licensed establishment was operated in a noisy and/or disorderly manner.

The fourth count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on July 8, 9, September 16 and November 4, 2006, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The fifth 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 November 16, 17, 18 and 19, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when the hotel liquor license was suspended at Citation No. 05-2086.

The sixth 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 November 16, 17, 18, 19 and 21, 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 visibly from the outside of the premises, a Notice of Suspension.

On February 25, 2008 counsel for the Bureau filed a Motion to Amend as follows:

- Count No. 3 (noisy and/or disorderly operation) – Withdrawn
- Count No. 4 (loudspeakers) – date of September 16, 2006 – Withdrawn
- Count No. 5 (sales when license suspended) – dates of November 17 and 18, 2006
– Withdrawn
- Count No. 6 (failed to post placard) – dates of November 17 and 18, 2006 -
Withdrawn

The investigation which gave rise to Citation No. 06-2353 began on June 23, 2006 and was completed on September 1, 2006; and notice of the violation was sent to Licensee by Certified Mail on September 15, 2006. The notice of violation was received by Licensee.

The investigation which gave rise to Citation No. 06-2598 began on July 5, 2006 and was completed on October 6, 2006; and notice of the violation was sent to Licensee by Certified Mail on October 25, 2006. The notice of violation was received by Licensee.

The investigation which gave rise to Citation No. 06-3015 began on August 30, 2006 and was completed on December 3, 2006; and notice of the violation was sent to Licensee by Certified Mail on December 12, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 6, 2008 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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, 253-255 Allegheny Street, Jersey Shore, PA by certified mail, return receipt requested and by first class mail on January 18, 2008. The notice set forth the date and time of the hearing as March 6, 2008 at 9:30 a.m., and the place of hearing as PA Department of Agriculture, 2130 County Farms Road, Montoursville, PA.

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:

COUNT 1 (Citation No. 06-2353)

1. Licensee failed to file its sales tax return for the quarter ending March 31, 2006 which was due by April 20, 2006 until August 3, 2006 (N.T. 48 and Exhibit C-15).
2. Licensee failed to file its sales tax return for the quarter ending June 30, 2006, which was due July 20, 2006 until August 3, 2006 (N.T. 48 and Exhibit C-15).

COUNT 2 (Citation No. 06-2598 Count No. 1 and
Citation No. 06-3015 Count No. 1

3. On July 8, 2006, while on the licensed premises in an undercover capacity, an officer of the Bureau took note of a female patron who had great difficulty maintaining her balance. She was bumping into people as she was walking up and down the bar talking to patrons. She had to use patrons and furniture in the bar to maintain her balance. At one point she leaned on the bar to the right of the officer, fell onto his lap and laid across him. As she was laying there the bartender asked if she wanted another drink. She was unable to talk but nodded her head "yes," and the bartender served her a Coors Light draft beer (N.T. 26-28).

4. On August 25, 2006 at 10:52 p.m., a male and a female officer of the Bureau arrived at the licensed premises where they observed a male bartender heard to be called Michael Funk and a female bartender Angie rendering service to approximately 35 patrons. At 10:55 p.m., there was a male patron heard to be called Bucky Duggan standing in the middle of the dance floor. Duggan was standing with a wide stance and having difficulty maintaining his balance. He was swaying side to side and front to back. He was holding a beverage that was spilling as he was swaying. A DJ performing on the premises was egging Duggan on over a microphone, saying, "Take it off." At that time the bartender, Angie, ran up to Duggan and pulled down his pants. A short time later another female pulled down his boxer shorts. Duggan just stood there with his arms out for about thirty seconds before he pulled his pants up (N.T. 30-31).

5. Duggan attempted to dance, but could not. He was swaying from side to side and spilling drinks. He then went to the bar where he continued bumping into patrons and spilling drinks. During this time Duggan received two drinks but the officer did not see where they came from (N.T. 31-32).

6. At 12:50 a.m., now August 26, 2006, the officers sat down at the bar directly next to Duggan. At that time the bartender, Angie was serving Duggan an alcoholic drink containing Jagermeister liquor, peach schnapps and cranberry juice. Duggan consumed this drink and then asked for a "screwdriver" a drink consisting of vodka and orange juice. Angie initially refused saying he was too drunk; but Duggan kept pestering her, and she eventually served him the "screwdriver." (N.T. 32).

7. On November 3, 2006, the officer again entered the licensed premises at 11:41 p.m. Upon entry, he observed that the bartenders were again Angie and Michael Funk. There were about 50 patrons present (N.T. 33).

8. At 12:10 a.m., now November 4, 2006 the officer took note of a male patron who was walking back and forth up and down the bar. He was bumping into patrons and holding onto their backs as he was walking to maintain his balance (N.T. 33-34).

9. The aforementioned patron took a position at the bar next to the officer. He apologized to the other patrons as he bumped into them, going down the bar (N.T. 34).

10. As soon as the aforementioned patron took a position at the bar, he spilled another patron's bottle of Coors Light beer. He apologized to the patron and apologized to Angie the bartender. While he was apologizing, the officer noted that his speech was very garbled and slurred. There was a very strong odor of alcohol on his breath. His eyes were partially closed and bloodshot, and he was swaying from side to side and front to back (N.T. 34).

11. While the aforementioned patron was apologizing to Angie for spilling the first drink, he then knocked over a second patron's glass. Angie then yelled at him, "You're a fucking drunk asshole!" Angie further told him, "Take your alcoholic drunk ass the fuck home." (N.T. 34).

12. The aforementioned patron apologized to Angie and Angie, on her own retrieved a bottle of Coors Light beer and gave it to the patron at no charge (N.T. 35).

13. On Saturday, December 2, 2006 the officer again entered the licensed premises where he observed bartenders Angie and Michael Funk and manager Darren Weaver rendering service to 50 patrons (N.T. 37).

14. The officer took note of a female patron heard to be called Wendy who was dancing on the dance floor. Wendy exhibited a serious lack of balance. She was swaying from side to side and front to back. She walked with a staggered gait, and her head was bobbing. She had great difficulty holding her head up straight (N.T. 37).

15. Wendy was dancing with a glass in her hand, and she dropped the glass on the dance floor. The glass broke and spilled the beverage on the floor. The officer went over to her and asked if she was alright. Wendy told him she was just fine, except she was drunk and lost her drink again. She told him it was the third one she had spilled and broken that night, and they were going to cut her off (N.T. 38).

16. While the officer was talking to Wendy he noted that she had a very strong odor of alcohol on her breath. Her speech was slurred and garbled, and her eyes were partially closed, red and bloodshot (N.T. 38).

17. After talking to the officer Wendy walked directly to the bar where Darren Weaver was waiting for her. Wendy apologized to Weaver, and told her she would clean up the spill. Weaver told her not to worry about it, and gave her another glass containing ice, Captain Morgan Rum, and Pepsi (N.T. 38).

COUNT NO. 3

(Dismissed)

COUNT NO. 4 (Citation No. 06-2598 Count No. 2
and Citation No. 06-3015 Count No. 3)

18. On July 8, 2006 an officer of the Bureau entered the licensed premises at 10:40 p.m. Upon entry he observed that a DJ was providing music for the entertainment of patrons. The music was amplified through loudspeakers (N.T. 26).

19. At 11:05 p.m. on July 8, 2006 the officer exited the licensed premises and conducted a sound check. He could hear amplified music and vocals emanating from the licensed premises at distances up to 300 feet (N.T. 26-27).

20. The officer reentered the licensed premises and exited again at 12:10 a.m., now July 9, 2006. Again he could hear amplified music emanating from the licensed premises at distances up to 300 feet (N.T. 27 and 29).

21. On November 4, 2006 at 1:40 a.m. an officer of the Bureau, while on the licensed premises observed that music was being provided for the entertainment of patrons. The music was amplified through loudspeakers. The officer exited the premises and could hear music emanating from the licensed premises at distances up to 300 feet (N.T. 35).

COUNTS NO. 5 AND 6
(Citation No. 3015 Counts No. 4 and 5)

22. Administrative notice is taken that at Citation No. 05-2086, the Office of Administrative Law Judge issued an order suspending the hotel liquor license of Licensee for a period of one day beginning at 7:00 a.m., Monday November 13, 2006 and ending at 7:00 a.m. on Tuesday, November 14, 2006, and continuing thereafter until Licensee had forwarded a written certification that the licensed premises was being operated as a bona fide hotel maintaining a kitchen in which food is regularly prepared for the public and having a current menu; and further, until the certification was reviewed, and the suspension terminated by further order (See N.T. Exhibit C-13).

23. Administrative notice is taken that the aforementioned suspension was terminated by Supplemental Order, effective November 22, 2006 (See N.T. Exhibit C-14).

24. On November 16, 2006 at 5:10 p.m., an officer of the Bureau arrived at the licensed premises to conduct a suspension check. The officer observed that the premises was closed to the public; however, there was no suspension placard posted in a conspicuous area (N.T. 17-18).

25. The officer returned to the licensed premises on November 16, 2006 at 11:53 p.m. At that time she found that the licensed premises was open and operating, and no suspension placard was posted (N.T. 20-21).

26. The officer entered the licensed premises at 11:53 p.m. and purchased a six pack of 12 ounce cans of Budweiser beer, paying a purchase price of \$4.00 (N.T. 20).

27. On November 19, 2006, two officers of the Bureau arrived at the licensed premises at 5:50 p.m. They observed no suspension placard posted on the licensed premises in a conspicuous place (N.T. 42-43).

28. At 6:10 p.m. on November 19, 2006, the officers entered the licensed premises where they ordered, received and paid for alcoholic beverages (N.T. 21, 42-43).

29. On November 21, 2006 an officer of the Bureau arrived at the licensed premises at 3:05 p.m. At this time the officer observed that there was no suspension placard properly posted on the licensed premises (N.T. 24).

CONCLUSIONS OF LAW:

1. Count No. 1 of the consolidated citation is **sustained** (Citation No. 06-2543).
2. Count No. 2 of the consolidated citation is **sustained** (Citation No. 06-2598 Count No. 1 and Citation No. 06-3015 Count No. 1).
3. Count No. 3 of the consolidated statute is withdrawn (Citation No. 06-2598 Count No. 2 and Citation No. 06-3015 Count No. 3).
4. Count No. 4 of the consolidated statute (Citation No. 06-2598 Count No. 3 and Citation No. 06-3015 Count No. 2) is **sustained** as to July 8, 2006, July 9, 2006, November 4, 2006. The date of September 16, 2006 was withdrawn.
5. Count No. 5 of the consolidated citation is **sustained** (Citation No. 06-3015 Count No. 4).
6. Count No. 6 of the consolidated citation is **sustained** (Citation No. 06-3015 Count No. 5).

PRIOR RECORD:

Licensee has been licensed since July 31, 2002, and has had twelve prior violations:

Citation No. 03-0208. Fine \$500.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets). September 18, 2002.

Citation No. 03-0347. Fine \$1,850.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 p.m. January 1, 2003.
2. Permitted dancing to a disc jockey until 2:15 a.m. January 1, 2003.
3. Sales to a visibly intoxicated person. December 31, 2002 and January 1, 2003.

Citation No. 03-0376. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 31, 2002.

Citation No. 03-2031. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 11 and 25, 2003.

Citation No. 04-1170. Fine \$750.00 and 1 day suspension. Fine not paid and license suspended 2 additional days and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. November 20, 26 and December 11, 2003.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (cards). March 13, 2004.

Citation No. 05-0090. Fine \$400.00.

1. Not a bona fide hotel in that bedrooms maintained for the accommodation of guests are insufficient in number and/or inadequately equipped. December 29, 2004.

Citation No. 05-2086. 1 day suspension and thereafter until conditions corrected.

1. Not a bona fide hotel where the public may, for a consideration, obtain meals in that you failed to provide food upon request. July 19, 25 and August 4, 2005.

Citation No. 06-0587. Fine \$1,450.00 and 1 day suspension and continuing thereafter until conditions corrected.

1. Operated the licensed establishment without a valid health permit or license. November 8, 9, 27 and December 1, 2005.
2. Refilled liquor bottles. December 21, 2005.
3. Failed to keep records on the licensed premises. December 21, 2005 and January 4, 2006.
4. Failed to keep on the licensed premises and/or provide an authorized employe of the Board/Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business. December 21, 2005 and January 4, 2006.
5. Not a bona fide hotel in that there is no kitchen apart form the public dining room or rooms in which food is regularly prepared for the public. December 21, 2005.
6. Failed to return your hotel liquor license to the board after your licensed establishment had not been in operation for a period of 15 consecutive days. January 19, 2006.

Citation No. 06-0827. Fine \$250.00 and 2 days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension. February 13, 2006.

Citation No. 06-1070. Fine \$500.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside. March 26, 2006.

Citation No. 06-1286. Fine \$200.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

1. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. April 15, 2006.

Citation No. 06-1566. Revocation without bond forfeiture.

1. Sales to a visibly intoxicated person. May 26, 2006.
2. Used loudspeakers or devices whereby music could be heard outside. May 27, 2006.

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, 3, 4 and 6 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 Counts 2 and 5 of this case.

In view of the fact that Licensee's hotel liquor license has previously been revoked and in view of the number of serious violations found in this case, revocation of the license will again be ordered.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. H-AP-894, issued to MCW, INC., be **REVOKED** effective at 7:00 a.m. on Monday, October 20, 2008. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is has previously been revoked there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been **REVOKED**. The Licensee's right to renew his license is hereby CANCELLED.

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

Dated this 15th day of September, 2008.

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.