

Mailing Date: SEP 21 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2548
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-339145
v.	:	
	:	LID - 55304
IZIO'S, INC.	:	
1130 E. CATAWISSA ST.	:	
NESQUEHONING, PA 18240-1805	:	
	:	
	:	
CARBON COUNTY	:	
LICENSE NO. R-SS-7491	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 8, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against IZIO'S, INC., License Number R-SS-7491 (hereinafter "Licensee").

The citation 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 September 7, 2006, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor License expired on August 31, 2006, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on August 31, 2006 and was completed on October 5, 2006; and notice of the violation was sent to Licensee by Certified Mail on October 10, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 11, 2007 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, 1130 E. Catawissa St., Nesquehoning, PA 18240-1805 by certified mail, return receipt requested and by first class mail on February 28, 2007. The notice set forth the date and time of the hearing as April 11, 2007 at 1:00 p.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Ave., 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:

1. The restaurant liquor license of Licensee expired on August 31, 2006, and, as of September 7, 2006, it had not yet been renewed (N.T. Exhibit C-5).
2. On September 7, 2006 an officer of the Bureau entered the licensed premises in an undercover capacity at approximately 7:40 p.m. (N.T. 6-7).
3. Upon entry the officer noted several customers in the bar area as well as patrons seated (N.T. 7).
4. The officer ordered a slice of pizza and a Labatt's beer from a female counterperson (N.T. 7).
5. The officer was served the Labatt's beer for \$3.00 (N.T. 8).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since February 6, 2006, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee IZIO'S, INC., pay a fine of \$1,250.00 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.