

Mailing Date: APR 30 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2570
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-337828
v.	:	
	:	LID - 29267
WALL HOTEL INC	:	
T/A WALL HOTEL	:	
473 WALL AVENUE	:	
WILMERDING PA 15148-1355	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. H-AP-1283	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Michael Nickles, Esquire

For Licensee
No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 7, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Wall Hotel, Inc., t/a Wall Hotel, License Number H-AP-1283 (hereinafter Licensee).

The citation contains two counts.

The first 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 August 29, 2006, Licensee, by its servants, agents or employees, sold alcoholic beverages after its hotel liquor license expired on May 31, 2006, and had not been renewed and/or validated.

The second count charges Licensee with violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations [40 Pa. Code §5.41], in that on August 29, 2006, Licensee, by its servants, agents or employees, operated its licensed establishment without a valid health permit or license.

An administrative hearing was conducted on January 23, 2007, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on August 11, 2006, and completed its investigation on October 4, 2006. (Exhibit C-11)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated October 17, 2006, which was sent by certified mail and returned unclaimed. (Exhibit C-12)
3. The citation was issued on November 7, 2006, and was sent by certified mail and returned unclaimed. (Exhibits C-13, C-14)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on October 17, 2006 by certified mail and first class mail.
5. The certified mailing of the notice of hearing was returned unclaimed. The first class mailing was not returned.
6. Licensee's true and correct address as certified by the Board is 473 Wall Avenue, Wilmerding, PA 15148-1355 (Exhibit C-2)

COUNTS 1 AND 2

7. On August 29, 2006 at 8:00 p.m., Liquor Enforcement Officer Daniel West entered Licensee's premises in an undercover capacity and observed a female bartender rendering service of alcoholic beverages to a male patron in possession of two bottles of Budweiser beer. (N.T. 34)
8. Upon taking a seat at the bar, Officer West ordered a bottle of Miller Lite beer. The bartender proceeded to the cooler located at the end of the bar and indicated that all they had was Rolling Rock or Budweiser. Officer West then changed his order to Budweiser. (N.T. 34)

9. Prior to serving the bottle of Budweiser beer, the bartender had difficulty removing the cap, at which time a second female entered the barroom from the kitchen, removed the cap and served the bottle of beer to Officer West, recording the transaction on the cash register resulting in a charge of \$3.00. (N.T. 34-35)

10. During the course of this visit, Officer West noted that the Health Permit issued by the Allegheny County Health Department was posted above the doorway to the kitchen reflecting an expiration date of December 31, 2005. Licensee's hotel liquor license was also posted along with the Health Permit, which liquor license reflected an expiration date of May 31, 2006. (N.T. 36)

11. Officer West departed Licensee's premises at 8:35 p.m. (N.T. 35)

12. Licensee's Health Permit issued by the Allegheny Health Department expired on December 31, 2005, and has not been reissued as of the date of certification issued on January 17, 2007. (Exhibit C-10, .T. 34, 37)

13. Licensee's hotel liquor license expired May 31, 2006, and has not been renewed/validated to the present. (Official Notice, Exhibit C-15)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged in Counts one and two of this citation by a preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On August 29, 2006, Licensee, by its servants, agents or employees, sold alcoholic beverages after its hotel liquor license expired on May 31, 2006, and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code.

3. On August 29, 2006, Licensee, by its servants, agents or employees, operated its licensed establishment without a valid health permit or license, which expired on December 31, 2005, in violation of Section 437 of the Liquor Code, and Section 5.41 of the Liquor Control Board Regulations.

WALL HOTEL, INC.
Citation Number 06-2570

PENALTY:

Relative to Count one, 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. As to Count two, Section 471 of the Liquor Code 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 a violation of this type.

Licensee's failure to respond to a Notice issued by this court on October 12, 2006, requiring a pre-hearing memorandum, as well as its failure to appear at the administrative hearing held in this matter demonstrates a clear lack of interest in this liquor license.

Based on the foregoing, the following penalties shall be imposed:

Count one - \$1,200.00.

Count two - \$300.00.

ORDER:

THEREFORE, it is hereby ordered that Wall Hotel, Inc., t/a Wall Hotel, License Number H-AP-1283, 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.

WALL HOTEL, INC.
Citation Number 06-2570

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 PA 17110-9661

Jurisdiction is retained to ensure compliance with this Order.

Dated this 24th day of April, 2007.

Roderick Frisk, J.

bg

NOTE: 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.