

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. 06-2577
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-340777
v.	:	
	:	LID - 54353
ROSVAND ENTERPRISES, LLC	:	
47 BELMONT ST.	:	
CARBONDALE, PA 18407-1642	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-1563	:	

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 ROSVAND ENTERPRISES, LLC, License Number R-AP-SS-1563 (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 October 5, 2006, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor License expired on September 30, 2006, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on September 28, 2006 and was completed on October 5, 2006; and notice of the violation was sent to Licensee by Certified Mail on October 19, 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, 47 Belmont Street, Carbondale, PA 18407-1642 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 2:00 p.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, 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. As of October 5, 2006, Licensee did not have authority to dispense alcoholic beverages (N.T. Exhibit C-5).
2. On October 5, 2006 at 8:30 p.m. an officer of the Bureau entered the licensed premises in an undercover capacity (N.T. 7).
3. The officer observed approximately five patrons, all of whom were in possession of alcoholic beverages (N.T. 7).
4. The officer ordered a 12 ounce can of Miller Lite beer which was served to him by the barmaid. She charged him \$2.00 for the alcoholic beverage and rang up the sale on the cash register and placed the money inside (N.T. 7).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since March 11, 2005, and has had three prior violations:

Citation No. 05-1907. Fine \$500.00 and 1 day suspension with thereafter conditions.

1. Sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code. On 12 dates between June 26 and July 27, 2005.

2. Not a bona fide restaurant in that food items were insufficient. July 28, 2005.
3. Permitted entertainment after 2:00 a.m. June 4, 2005.

Citation No. 06-0848. Fine \$250.00. 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. February 25, 2006.

Citation No. 06-2333. Fine \$300.00. 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. May 26, 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 \$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 ROSVAND ENTERPRISES, LLC 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.

an

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.