

Mailing Date: JUN 01 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2705
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-341181
v.	:	
	:	LID - 38561
SUPER SUPREME CORP.	:	
5708-10 GERMANTOWN AVE.	:	
2 ND FLOOR	:	
PHILADELPHIA, PA 19144-2137	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-7747	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Erik S. Shmukler, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Philadelphia, PA 19142

For Licensee
Donald M. Moser, Esquire
Washington West Building
235 S. 8th Street
Philadelphia, PA 19106-3519

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 29, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Super Supreme Corp. (Licensee), License Number R-AP-SS-EHF-7747.

The citation¹ charges Licensee with a violation of Section 15.62(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §15.62(a)]. The charge is that on October 23, 2006, Licensee, by servants, agents or employes, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

An evidentiary hearing was conducted on April 30, 2007 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #1, Philadelphia, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on October 10, 2006 and completed it on October 23, 2006. (N.T. 7)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on October 31, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 7)
3. Pursuant to Adjudication No. 06-0326 (Judge's Exhibit No. J-1), Licensee was suspended beginning at 7:00 a.m., Monday, October 23, 2006 and ending at 7:00 a.m., Tuesday, October 24, 2006. The Adjudication was a result of a failure to post a suspension placard in an earlier Order. (N.T. 5-6)
4. A Bureau Enforcement Officer arrived at the subject premises on October 23, 2006 at approximately 3:10 p.m. The licensed premises is located on the second floor of a building. The entrance to the licensed premises is at street level. (N.T. 8-9)
5. The premises was closed but there was no suspension placard posted on the front door of the premises or any of the windows on the second floor. (N.T. 8-9)
6. Licensee's representative posted the placard on the door of the first floor entrance to the premises. The representative did so somewhere between 2:00 a.m. and 3:00 a.m., the morning before the suspension was to go in effect. He returned about 10:00 a.m., the following day and noticed the placard was no longer in place. (N.T. 18-28)

1. Commonwealth Exhibit No. B-2, N.T. 7.

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:

It is quite clear what happened here. The suspension placard was placed on the front door as required. Apparently, someone removed the placard before the Officer's visit.

PRIOR RECORD:

Licensee has been licensed since July 1, 1996, and has had six prior violations (Judge's Exhibit No. J-1, N.T. 5):

Adjudication No. 99-1911. \$1,500.00 fine.

1. Loudspeakers could be heard outside.
March 1 and April 2, 1999.
2. Permitted lewd, immoral or improper entertainment.
April 2, 1999.
3. Permitted entertainers to contact or associate with patrons.
April 2, 1999.

Adjudication No. 01-0731. \$3,000.00 fine and 3 days suspension.

1. Aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of your licensed premises in the furtherance of the traffic in, or use of, a controlled substance.
March 10, 2001.
2. Loudspeakers could be heard outside.
March 10, 2001.
3. Insufficient illumination.
March 10, 2001.

Adjudication No. 03-0191. \$500.00 fine.

- Failed to post a notice of suspension.
January 13 and 15, 2003.

Adjudication No. 04-2011. \$1,500.00 fine.

1. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
September 18, 2004.
2. Sales between 2:00 a.m. and 7:00 a.m.
September 18, 2004.

Adjudication No. 05-0748. \$2,000.00 fine and 5 points assessed.
Sales between 2:00 a.m. and 7:00 a.m.
March 5, 2005.

Adjudication No. 06-0326. 1 day suspension and 1 point assessed.
Failed to post in a conspicuous place on the outside of
the licensed premises, a notice of suspension.
January 9, 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 this case.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 2004

Section 479 of the Liquor Code [47 P.S. §4-479], establishes a numerical system for use in cities of the first class. Every restaurant and eating place licensee in cities of the first class who has been cited for a violation of §471 of the Liquor Code [47 P.S. §4-471], on or after February 6, 2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to a monetary penalty and/or suspension and/or revocation of the license by the administrative law judge.

An enhanced penalty violation requires that the Administrative Law Judge assign five to ten points, depending upon the circumstances surrounding the violation, to a license record for each and every enhanced penalty violation. The Board has by regulation established a point system ranging from one to five points for other violations of the Liquor Code and Regulations not specifically set forth in §479.

Section 481(a) [47 P.S. §4-481(a)], provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain compliant with the provisions of §471.1 [47 P.S. §4-471.1], relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an order within ninety days shall result in two additional points being assessed against the license record.

Section 481(b) [47 P.S. §4-481(b)], provides that when any license accumulates fifteen points or more, the administrative law judge must place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party. Upon completion of the transfer, the points assigned to it will be reduced to ten. If, within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of 471.1, two additional points will be removed from the license record.

Notwithstanding other provisions of the Act, §481(c) [47 P.S. §4-481(c)], provides that when any license accumulates twenty or more points in more than one citation, the Administrative Law Judge must revoke the license.

Accordingly, you are hereby notified that one point has been assigned to your record.

Licensee's physical arrangement presents a difficult problem. It is questionable in my mind whether placing a suspension placard on the second floor window from the inside constitutes "plainly visible" which is part of the posting requirement. Licensee therefore has no choice but to place the placard on the outside of the first floor steel door. I don't see the benefit of imposing another suspension because of the likelihood the suspension placard will be removed again. As Licensee was closed, I impose a \$200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$200.00 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

Assessment of Points

IT IS FURTHER ORDERED that one (1) point is hereby assessed against the record of Super Supreme Corp., License No. R-AP-SS-EHF-7747, as required by 40 Pa. Code §3.122(d).

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 23rd day of May, 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.