Mailing Date: OCT 16 2007

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 07-0300
	:	Incident No. W03-345014
v.	:	
	:	LID - 49443
NINE IS ENOUGH, INC. T/A THE DRAFT HOUSE 670-672 BAER AVE. HANOVER, PA 17331-2705	:	
YORK COUNTY LICENSE NO. R-AP-19733	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 1, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against NINE IS ENOUGH, INC., License Number R-AP-19733 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] in that on January 29, 2007, 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 visible from the outside of the premises, a Notice of Suspension.

The investigation which gave rise to the citation began on December 15, 2006 and was completed on January 29, 2007; and notice of the violation was sent to Licensee by Certified Mail on February 6, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 18, 2007 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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, 670-672 Baer Ave., Hanover, PA 17331-2705 by certified mail, return receipt requested and by first class mail on June 1, 2007. The notice set forth the date and time of the hearing as July 18, 2007 at 11:00 a.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

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. On December 15, 2006 by Supplemental Opinion and Order Upon Payment of Fine at Citation No. 06-0896 the Office of Administrative Law Judge imposed upon Licensee a one day suspension beginning at 7:00 a.m. on Monday, January 29, 2007 and ending at 7:00 a.m. on Tuesday, January 30, 2007 (Administrative notice).

2. On Monday, January 29, 2007 an officer of the Bureau arrived at the licensed premises at 8:31 p.m. (N.T. 8). The officer inspected the outside of the licensed premises including the rear portion and did not find a suspension placard posted (N.T. 8).

3. The officer also tried the front and back doors and found them to be locked. There were no lights emanating from in the licensed premises (N.T. 8-9).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since May 21, 2002, and has had five prior violations:

Citation No. 03-0617. Fine $600.00.

1. Used loudspeakers or devices whereby music could be heard outside. September 20 and October 20, 2002.
2. Noisy and/or disorderly operation. September 20 and October 20, 2002.
3. Engaged in disorderly conduct. October 20, 2002.

4. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pools). February 27, 2003.

Citation No. 04-0408. Fine $2,300.00.

1. Used loudspeakers or devices whereby music could be heard outside. April 27, May 11, June 14, 21, July 19, August 20 and 30, 2003.
2. Sales to a visibly intoxicated person. June 21, 2003.
3. Noisy and/or disorderly operation. On 22 dates from April 27 through October 17, 2003.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time. November 26, 2003.
5. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. November 26, 2003.

Citation No. 06-0896. Fine $1,000.00 and 1 day suspension and thereafter until conditions corrected. Fine not paid and license suspended 1 additional day and thereafter until fine paid.

1. Failed to appoint a Board approved full time manager for the licensed premises. April 9, 2005 through March 8, 2006.

Citation No. 06-1245. Fine $150.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. March 22, 2006.

Citation No. 06-2324. Fine $1,000.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. July 28, August 7 and 16, 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.

Under the circumstances of this case, the penalty imposed shall be a fine of $500.00.

ORDER

THEREFORE, it is hereby ordered that Licensee NINE IS ENOUGH, INC., pay a fine of $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.

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 2nd day of October, 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.