

Mailing Date: APR 02 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0647
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-347332
	:	
v.	:	LID - 52957
	:	
VICK INC	:	
T/A POINT VIEW HOTEL	:	
3720 BROWNSVILLE ROAD	:	
BRENTWOOD	:	
PITTSBURGH PA 15227-3520	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. H-AP-SS-EHF-616	:	

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 March 30, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Vick, Inc., t/a Point View Hotel, License Number H-AP-SS-EHF-616 (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 February 26, 2007, Licensee, by its servants, agents or employees, 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.

VICK, INC.

An administrative hearing was conducted on February 5, 2008, 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 January 24, 2007, and completed its investigation on February 26, 2007. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated March 2, 2007, which was sent by certified mail. (Exhibit C-2)
3. The citation was issued on March 30, 2007, and was sent by certified mail and received by Licensee on April 16, 2007. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on January 4, 2008 by certified mail as well as first class mail.
5. The aforementioned certified mailing of the notice of hearing was returned unclaimed. The first class mailing was not returned.
6. In a previous Adjudication and Order at Citation Number 06-2216 dated January 23, 2007, Licensee was Ordered to pay a fine in the amount of \$1,200.00 and was further Ordered to serve a suspension for a period of one day commencing at 7:00 a.m. on Monday, February 26, 2007 and ending at 7:00 a.m. on Tuesday, February 27, 2007. (N.T. 7)
7. On Monday, February 26, 2007 at 2:45 p.m., Liquor Enforcement Officer M. J. Zimmerman approached Licensee's premises and noted that the establishment was closed. Upon looking through a window, Officer Zimmerman further noted that the premises was vacated with the furniture and equipment removed. (N.T. 7-8)
8. During the course of this inspection of the exterior of Licensee's premises, Officer Zimmerman noted that there was no suspension placard posted anywhere visible from outside the premises. (N.T. 7-8)

CONCLUSIONS OF LAW:

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

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2. On February 26, 2007, Licensee, by its servants, agents or employees, 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, in violation of Section 15.62(a) of the Liquor Control Board Regulations.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged by a clear 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).

PRIOR RECORD:

Licensee has been licensed since August 26, 2004, and has had three prior violations, to wit:

Citation No. 06-0377. Fine \$1,100.00.

1. Sales after the license expired and had not been renewed and/or validated.
January 21, 2006.

Citation No. 06-1758. Fine \$650.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Illegal gambling (machines).
May 25, 2006.

Citation No. 06-2216. Fine \$1,200.00, 1 day suspension and R.A.M.P. training mandated.

1. Sold liquor for consumption off premises.
July 4, 2006.
2. Sales to a visibly intoxicated person.
July 4, 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.

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Records of the Board reveal that Licensee's hotel liquor license is in history status having been revoked at Citation Number 06-1758 on May 28, 2007, and at Citation Number 06-2216 on May 15, 2007.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. H-AP-SS-EHF-616, issued to Vick, Inc., t/a Point View Hotel be **REVOKED** effective at 7:00 a.m. on Monday, May 12, 2008. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is in history status, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

Jurisdiction is retained to ensure compliance with this order.

Dated this 26th day of March, 2008.

Roderick Frisk, J.

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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.