

Mailing Date: OCT 16 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0657 &
LIQUOR CONTROL ENFORCEMENT	:	07-0787
	:	(as consolidated)
	:	
	:	Incident No. W06-346232
v.	:	W06-345376
	:	
	:	LID - 49486
	:	
MCW, INC.	:	
T/A ALLEGHENY HOUSE	:	
253-255 ALLEGHENY ST.	:	
JERSEY SHORE, PA 17740-1422	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. H-AP-894	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of Citation No. 07-0657 that was issued on April 12, 2007 and Citation No. 07-0787 issued on April 19, 2007 by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MCW, INC., License Number H-AP-894 (hereinafter "Licensee").

On February 26, 2008, counsel for the Bureau filed a Motion to Consolidate Citation Nos. 07-0657 and 07-0787 under Citation No. 07-0657. The Motion was granted.

The citation contains six 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 February 15, 2007, Licensee, by its servants, agents or employes, sold alcoholic beverages without a license after the temporary authority granted to it by the Pennsylvania Liquor Control Board had expired on February 11, 2007.

The second count charges Licensee with violation of Section 13.102(a)(3) of the Liquor Control Board Regulations [40 Pa. Code §13.102(a)(3)] in that on February 15, 2007, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited draft beers and mixed drinks were served for the set price of \$12.00.

The third count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on January 1, 2007, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The fourth count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 7215, 7216 and 7217 of the Tax Reform Code of 1971 [72 P.S. §§7215, 7217 and 7217] in that Licensee, violated the Tax Reform Code of 1971, in that it failed and/or refused to file sales tax and employer tax returns with the Commonwealth of Pennsylvania, Department of Revenue, for the period August 1, 2006 through February 20, 2007.

The fifth count 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 1, 2 and 3, 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 visibly from the outside of the premises, a Notice of Suspension.

The sixth 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 February 2 and 3, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave liquor and/or malt and/or brewed beverages during a time when the hotel liquor license was suspended at Citation No. 06-0827 and Citation No. 06-1070.

The investigation which gave rise to Citation No. 07-0657 began on January 13, 2007 and was completed on February 21, 2007; and notice of the violation was sent to Licensee by Certified Mail on March 20, 2007. The notice of violation was received by Licensee.

The investigation which gave rise to Citation No. 07-0787 began on December 20, 2006 and was completed on February 3, 2007; and notice of the violation was sent to Licensee by Certified Mail on February 23, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 6, 2008 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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, 253-255 Allegheny Street, Jersey Shore, PA by certified mail, return receipt requested and by first class mail on January 18, 2008. The notice set forth the date and time of the hearing as March 6, 2008 at 9:30 a.m., and the place of hearing as PA Department of Agriculture, 2130 County Farms Road, Montoursville, PA.

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:

COUNT NO. 1 AND 2
(CITATION NO. 07-0657 COUNT NO. 1 AND 2)

1. Administrative notice is taken that, the Liquor Control Board granted temporary authority to Licensee to dispense liquor and malt or brewed beverages on weekdays, permit dancing, provide entertainment and to purchase liquor at a discount at a Pennsylvania State Liquor Store for a period of sixty days from December 13, 2006 through February 10, 2007 (N.T. Exhibit C-15).

2. On February 15, 2007 at 8:45 p.m., two officers of the Bureau entered the licensed premises in an undercover capacity. At that time, the premises was open and operating (N.T. 23).

3. As the officers entered they were approached by the manager of the licensed premises, Darren Weaver who informed them that there was a cover charge which covered a buffet that included spaghetti and pizza and complimentary drinks (N.T. 24).

4. One of the officers paid \$25.00 to cover the cover charge for both officers and received \$1.00 in change (N.T. 24).

5. The officers then ordered drinks. One ordered a "fuzzy navel," a mixed drink consisting of peach schnapps and orange juice. The other officer ordered a mixed drink consisting of Captain Morgan Special Rum and Coca Cola. They were served these drinks, and no more money exchanged hands (N.T. 24-25).

6. At 9:45 p.m. both officers ordered another round of the same drinks, which were served to them. At 10:20 p.m. and 11:00 p.m. one of the officers ordered and was served Captain Morgan Spiced Rum and Coca Cola mixed drinks. Neither of the officers paid anything for any of these subsequent drinks (N.T. 25).

COUNT 3
(CITATION NO. 07-0657 COUNT NO. 3)

7. On December 31, 2006 at 11:28 p.m., an officer of the Bureau entered the licensed premises where he observed bartender Michael Funk rendering service to approximately 50 patrons (N.T. 20-21).

8. The officer observed that a DJ was providing music for the entertainment of patrons that was being amplified through loudspeakers (N.T. 21).

9. At 1:48 a.m., now January 1, 2007 the officer exited the premises and could clearly hear amplified music emanating from the licensed premises at distances up to 300 feet away (N.T. 21).

COUNT NO. 4
(CITATION NO. 07-0657 COUNT NO. 4)

10. Licensee failed to file with the Pennsylvania Department of Revenue a sales tax return for the taxable sales made by the Licensee during the quarter ending September 30, 2006 which was due October 20, 2006, until February 23, 2007 (N.T. Exhibit C-16).

11. Licensee failed to file with the Pennsylvania Department of Revenue a sales tax return for taxable sales made by the Licensee during the quarter ending December 31, 2006 which was due January 20, 2007, until February 23, 2007 (N.T. Exhibit C-16).

12. Licensee failed to file with the Pennsylvania Department of Revenue a sales tax return for taxable sales made during the quarter ending March 31, 2007, which was due April 20, 2007 (N.T. Exhibit C-17).

13. Licensee failed to file with the Pennsylvania Department of Revenue a return for employe withholding taxes withheld by Licensee during the quarter ending September 30, 2006, which was due October 30, 2006, until February 22, 2007 (N.T. Exhibit C-18).

14. Licensee failed to file with the Pennsylvania Department of Revenue a return for employe payroll taxes withheld by Licensee during the quarter ending December 31, 2006 which was due January 31, 2007 until February 22, 2007 (N.T. Exhibit C-18).

15. Licensee failed to file with the Pennsylvania Department of Revenue a return for employe payroll taxes withheld by Licensee during the quarter ending March 31, 2007 which were due April 30, 2007 (N.T. C-19).

COUNT NO. 5 AND COUNT NO. 6
(CITATION NO. 07-0787 COUNTS NO. 1 AND 2)

16. Administrative notice is hereby taken that on October 26, 2006 the Office of Administrative Law Judge issued an Adjudication at Citation No. 06-0827 imposing upon Licensee a fine of \$250.00 and suspending the hotel liquor license of Licensee for a period of two days beginning at 7:00 a.m. on January 8, 2007 and ending at 7:00 a.m. on January 10, 2007 (See N.T. Exhibit C-9).

17. Administrative notice is hereby taken that on December 8, 2006 the Office of Administrative Law Judge issued a Supplemental Order at Citation No. 06-0827 suspending the hotel liquor license of Licensee for a period of one day beginning at 7:00 a.m. on Thursday, February 1, 2007 and ending on Friday, February 2, 2007 at 7:00 a.m., and continuing thereafter until the fine in the amount of \$250.00 had been paid. It was further ordered that in the event the fine of \$250.00 as not paid within 60 days the imposed penalty would be reevaluated and revocation of the license considered (See N.T. Exhibit C-10).

18. Administrative notice is hereby taken that on February 20, 2007, the Office of Administrative Law Judge issued a Second Supplemental Order at Citation No. 06-0827 revoking the hotel liquor license for failing to pay the \$250.00 fine (See N.T. C-11).

19. On February 1, 2007, two officers of the Bureau arrived at the licensed premises at 7:00 a.m. to conduct a suspension check. Upon arrival, they immediately explored the front area of the establishment and did not observe any type of suspension placard properly posted. The officers then proceeded to the rear of the premises where there is an entrance and exit doorway. At that location they did not observe any type of suspension placard properly posted (N.T. 11-12).

20. On February 2, 2007, two officers of the Bureau arrived at the licensed premises at 11:45 p.m. to do a suspension check. The officers found no suspension placard posted on the door or in the window. The officers entered the licensed premises at 11:52 p.m. and exited at 12:05 a.m. then February 3, 2007. At that time the officers again observed no suspension placard posted (N.T. 17-19).

21. Administrative notice is hereby taken that on October 26, 2006 the Office of Administrative Law Judge issued an Adjudication at Citation No. 06-1070 imposing upon Licensee a fine of \$500.00 (See N.T. Exhibit C-12).

22. Administrative notice is hereby taken that on December 8, 2006 the Office of Administrative Law Judge issued a Supplemental Order at Citation No. 06-1070 suspending the hotel liquor license of Licensee for a period of one day beginning at 7:00 a.m. on Friday, February 2, 2007 and ending at 7:00 a.m. on Saturday, February 3, 2007 and continuing thereafter until the fine in the amount of \$500.00 was paid. It was further ordered that in the event the fine was not paid within 60 days from December 28, 2006, the suspension with thereafter conditions would be reviewed and revocation of the license would be considered (See N.T. Exhibit C-13).

23. Administrative notice is hereby taken that on February 20, 2007 the Office of Administrative Law Judge, at Citation No. 06-1070 issued a Second Supplemental Order revoking the hotel liquor license for failure to pay the \$500.00 fine (See N.T. Exhibit C-14).

24. On February 2, 2007, shortly after 11:45 p.m., two officers entered the licensed premises, which they found to be open and operating. They paid an entry fee to a doorman and approached the bar where they ordered, were served and paid for alcoholic beverages (N.T. 17-18).

25. The officers observed that other patrons were being served alcoholic beverages while they were on the licensed premises (N.T. 18).

26. The officers departed the premises at 12:05 a.m. on February 3, 2007 (N.T. 18).

CONCLUSIONS OF LAW:

Counts No. 1, 2, 3, 4, 5 and 6 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since July 31, 2002, and has had twelve prior violations:

Citation No. 03-0208. Fine \$500.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets). September 18, 2002.

Citation No. 03-0347. Fine \$1,850.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 p.m. January 1, 2003.
2. Permitted dancing to a disc jockey until 2:15 a.m. January 1, 2003.

3. Sales to a visibly intoxicated person. December 31, 2002 and January 1, 2003.

Citation No. 03-0376. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 31, 2002.

Citation No. 03-2031. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 11 and 25, 2003.

Citation No. 04-1170. Fine \$750.00 and 1 day suspension. Fine not paid and license suspended 2 additional days and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. November 20, 26 and December 11, 2003.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (cards). March 13, 2004.

Citation No. 05-0090. Fine \$400.00.

1. Not a bona fide hotel in that bedrooms maintained for the accommodation of guests are insufficient in number and/or inadequately equipped. December 29, 2004.

Citation No. 05-2086. 1 day suspension and thereafter until conditions corrected.

1. Not a bona fide hotel where the public may, for a consideration, obtain meals in that you failed to provide food upon request. July 19, 25 and August 4, 2005.

Citation No. 06-0587. Fine \$1,450.00 and 1 day suspension and continuing thereafter until conditions corrected.

1. Operated the licensed establishment without a valid health permit or license. November 8, 9, 27 and December 1, 2005.
2. Refilled liquor bottles. December 21, 2005.
3. Failed to keep records on the licensed premises. December 21, 2005 and January 4, 2006.

4. Failed to keep on the licensed premises and/or provide an authorized employe of the Board/Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business. December 21, 2005 and January 4, 2006.
5. Not a bona fide hotel in that there is no kitchen apart from the public dining room or rooms in which food is regularly prepared for the public. December 21, 2005.
6. Failed to return your hotel liquor license to the board after your licensed establishment had not been in operation for a period of 15 consecutive days. January 19, 2006.

Citation No. 06-0827. Fine \$250.00 and 2 days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension. February 13, 2006.

Citation No. 06-1070. Fine \$500.00. 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. March 26, 2006.

Citation No. 06-1286. Fine \$200.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

1. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. April 15, 2006.

Citation No. 06-1566. Revocation without bond forfeiture.

1. Sales to a visibly intoxicated person. May 26, 2006.
2. Used loudspeakers or devices whereby music could be heard outside. May 27, 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 Counts 2, 3, 4 and 5 of this case.

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 Counts 1 and 6 of this case.

In view of the fact that this license has already been revoked as the result of previous citations, an order of revocation will also be entered in this case.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. H-AP-894, issued to MCW, INC., be **REVOKED** effective at 7:00 a.m. on Monday, November 3, 2008. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is already revoked there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been **REVOKED**. The Licensee's right to renew his license is hereby CANCELLED.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 2nd day of October, 2008.

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.