

Mailing Date: NOV 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0911
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-342429
v.	:	
	:	LID - 14140
YOUR WELCOME INN, INC.	:	
T/A YOUR WELCOME INN	:	
325 SOUTH NEW STREET	:	
BETHLEHEM, PA 18015-1654	:	
	:	
	:	
NORTHAMPTON COUNTY	:	
LICENSE NO. R-9985	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Roy Harkavy, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Holly V. Calantoni, Esquire
211 West Broad Street
Bethlehem, PA 18018

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 9, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Your Welcome Inn, Inc., t/a Your Welcome Inn (Licensee), License Number R-9985.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(2) and §4-493(16)]. The charge is that on December 9, 2006, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 A.M. and 7:00 A.M.

The second count charges Licensee with violations of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)]. The charge is that on September 5, 6, 12, 13, 19, 20, 26, 27 and 30, 2006, Licensee, by servants, agents or employes, permitted one (1) female minor, nineteen (19) years of age, to frequent its licensed premises.

The third count charges Licensee with violations of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on September 5, 6, 12, 13, 19, 20, 26, 27 and 30, 2006, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, nineteen (19) years of age.

An evidentiary hearing was conducted on October 19, 2007 at the Lehigh County Courthouse, Room 730, 7th Floor, 455 West Hamilton Street, Allentown, 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 30, 2006 and completed it on March 20, 2007. (Commonwealth Exhibit No. C-1, 07-0911)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 6, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 07-0911)

Count No. 1:

3. On December 9, 2006, two Bureau Enforcement Officers entered the subject premises at approximately 1:10 a.m., in an undercover capacity. At 2:00 a.m., the premises lights were turned off. The front door was open but no last call was given. At 2:08 a.m., the Officer purchased a beer. At 2:10 a.m., a patron purchased a six pack of beer to go at the bar. The Officers departed the premises at 2:45 a.m., with approximately five patrons remaining. (N.T. 57-60)

1. Commonwealth Exhibit No. C-2, 07-0911.

Count Nos. 2 and 3:

4. On the dates charged, a twenty year old was at the licensed premises and able to purchase alcoholic beverages. (N.T. 21-28)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2 and 3 are **sustained** as charged.

DISCUSSION:

The Officer's testimony also proved that Licensee permitted patrons to possess alcoholic beverages after 2:30 a.m. I take the conduct into consideration as an exasperating factor.

PRIOR RECORD:

Licensee has been licensed since February 21, 1984, and has had three prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-3):

Adjudication No. 02-1296. \$350.00 fine.
Gambling (machine).
June 24, 2002.

Adjudication No. 03-1655. \$2,000.00 fine.
1. Sales to a visibly intoxicated person.
June 20, 2003.
2. Sales to minors.
August 29, 2003.

Adjudication No. 06-1136. Fine \$500.00 and 1 day suspension.
Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machine).
February 16, 18, 20 and 22, 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 Count Nos. 1, 2 and 3 in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudications (03-1655 AND 06-1136), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

I believe the minor was required to show proof of age at some point. However, that does not alter the legal consequences. Accordingly, I impose:

Count No. 1 – \$1,250.00 fine and 1 day suspension.

Count Nos. 2 and 3 – merged - \$1,250.00 fine and 1 day suspension.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,500.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant liquor license (including all permits) of Your Welcome Inn, Inc., t/a Your Welcome Inn, License No. R-9985, be suspended for a period of two days, **BEGINNING** at 7:00 a.m., on Tuesday, January 15, 2008, and **ENDING** at 7:00 a.m., on Thursday, January 17, 2008.

Licensee is directed, on Tuesday, January 15, 2008, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Thursday, January 17, 2008, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

R.A.M.P. Requirements

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 16th day of November, 2007.

Felix Thau, A.L.J.

pm

Detach Here and Return Stub with Payment

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