

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. 07-2048
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-358812
v.	:	
	:	LID - 34645
STEPHEN E LOPATICH	:	
T/A J.L.'S INC	:	
1057 DERRY ROAD	:	
DERRY PA 15650-9623	:	
	:	
	:	
WESTMORELAND COUNTY	:	
LICENSE NO. R-17831	:	

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 September 12, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Stephen E. Lopatich, t/a J.L.'s, Inc., License Number R-17831 (hereinafter Licensee).

The citation 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 August 8, 2007, Licensee, by his servants, agents or employees, sold alcoholic beverages after his Restaurant Liquor License expired on June 30, 2007, and had not been renewed and/or validated.

On November 14, 2007, Chief Administrative Law Judge Eileen S. Maunus granted the Bureau's motion to amend the date of the citation to August 3, 2007.

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 August 3, 2007, and completed its investigation on August 3, 2007. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated August 13, 2007, which was sent by certified mail and returned unclaimed. (Exhibit C-2)
3. The citation was issued on September 12, 2007, and was sent by certified mail and received by Licensee on September 14, 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. A review of Board records reveal that Licensee's restaurant liquor license expired on June 30, 2007, and was not validated until September 4, 2007, for the license year expiring June 30, 2008. (Exhibit C-5, N.T. 13-14)
7. During the period July 1, 2007 through September 3, 2007, the Board had not granted Licensee authority to operate. (Exhibit C-5, N.T. 13-14))
8. On Friday, August 3, 2007 at 2:30 p.m., Liquor Enforcement Officer Daniel J. West entered Licensee's premises in an undercover capacity and observed a female bartender later identified as Connie White rendering service of alcoholic beverages to six patrons. Officer West noted that some of the patrons were in possession of and consuming bottled beer. (N.T. 11)
9. Upon entering, Officer West purchased a bottle of Budweiser beer from bartender Connie White for \$2.40, which transaction was recorded on the cash register. (N.T. 11)

10. Subsequently, Officer West identified himself to bartender Connie White and asked to see Licensee's liquor license. Ms. White and Officer West entered the bar serving area behind the bar counter where the liquor license was displayed, at which time Officer West pointed out that the license expired June 30, 2007. (N.T. 12)

11. At this time, Ms. White introduced Officer West to Licensee Stephen E. Lopatich who was seated at the bar. Officer West discussed the expired liquor license with Mr. Lopatich and advised him to cease the service of alcoholic beverages. (N.T. 12)

12. Officer West departed Licensee's premises at 2:45 p.m. with three patrons remaining. (N.T. 12-13)

CONCLUSIONS OF LAW:

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

2. On August 3, 2007, Licensee, by his servants, agents or employees, sold alcoholic beverages after the his Restaurant Liquor License expired on June 30, 2007, and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code.

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).

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 this case.

The record discloses that Licensee has failed to submit a pre-hearing memorandum and has also failed to appear at the administrative hearing held in this matter. In the opinion of this court, these circumstances demonstrate a clear lack of interest in this liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of \$2,500.00.

STEPHEN E. LOPATICH
Citation Number 07-2048

ORDER:

THEREFORE, it is hereby ordered that Stephen E. Lopatich, t/a J.L.'s, Inc., License Number R-17831, 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.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 27th 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.

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 PA 17110-9661

Citation No. 07-2048, Stephen E. Lopatich