

Mailing Date: APR 25 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2204
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-357735
v.	:	
	:	LID - 53620
SAILTAE, INC.	:	
290 S. PENNSYLVANIA BLVD.	:	
STE. 242	:	
WILKES-BARRE, PA 18702-4413	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-15183	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 24, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Sailtae, Inc. (Licensee), License Number R-AP-SS-15183.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 15.62(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §15.62(a)]. The charge is that on August 6, 2007, Licensee, by 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 second count charges Licensee with a violation of Sections 491(1), 492(2) and 493(16) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §4-491(1), §4-492(2) and §4-493(16)]. The charge is that on August 6, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when its Restaurant Liquor License was suspended at Citation No. 07-0562X.

An evidentiary hearing was conducted on March 19, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on February 1, 2008 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked: "Moved Left No Address, Unable to Forward, Return to Sender." A copy of the hearing notice was also mailed by first-class mail to Carolyn Falzone. The notice was returned as being marked: "Unclaimed."

2. The Bureau began its investigation on July 18, 2007 and completed it on August 6, 2007. (N.T. 6)

3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on September 5, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 07-2204, N.T. 7)

1. Commonwealth Exhibit No. C-2, 07-2204, N.T. 7.

Count Nos. 1 and 2:

4. Pursuant to Adjudication No. 07-0562X, Licensee was to have its license suspended for a period of one day, effective at 7:00 a.m., August 6, 2007 and ending at 7:00 a.m., August 7, 2007, and continuing thereafter until the fine was paid.

5. A Bureau Enforcement Officer visited the premises on that day at 9:30 p.m. Licensee was open and in operation selling alcoholic beverages. No suspension placard was posted. (N.T. 9-10)

6. The Officer identified himself to the bartender advising that the license was to be suspended. Licensee ceased operation. (N.T. 10)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Count Nos. 1 and 2 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since September 16, 2004, and has had twelve prior violations (Commonwealth Exhibit No. C-3, N.T. 8):

Adjudication No. 05-0172. Fine \$1,250.00.
Sales to a visibly intoxicated person.
January 9, 2005.

Adjudication No. 05-0571. Fine \$550.00.
Possessed or operated gambling devices or
paraphernalia or permitted gambling or lotteries,
poolselling and/or bookmaking on the licensed
premises (machines).
February 6, 2005.

Adjudication No. 05-1268. Fine \$350.00.
Advertised or permitted to be advertised in print
alcoholic beverages within 300 feet of a church,
school or public playground.
May 23 and 27, 2005.

Adjudication No. 06-1298. Fine \$150.00.
Issued worthless checks in payment for malt or
brewed beverages.
March 16, 2006.

Adjudication No. 06-2499. Fine \$1,000.00.
Used loudspeakers or devices whereby music could
be heard outside.
September 8 and 21, 2006.

Adjudication No. 06-2819. Fine \$1,000.00.
Issued worthless checks in payment for malt or
brewed beverages.
September 6, 2006.

Adjudication No. 07-0265. Fine \$250.00 and 3 days suspension.

1. Sales to minors.
December 16, 2006.
2. Fortified, adulterated and/or contaminated liquor.
January 17, 2007.

Adjudication No. 07-0562. 1 day suspension.
Issued worthless checks in payment for malt or
brewed beverages.
November 21, 2006.

Adjudication No. 07-0933. 3 days suspension.
Sales to a minor.
March 24, 2007.

Adjudication No. 07-1372. Fine \$1,000.00. Fine not paid and
license suspended for a period of one day and thereafter until
fine paid.
Issued worthless checks in payment for malt or
brewed beverages.
February 2, 8, 9, 22, March 8 and 9, 2007.

Adjudication No. 07-1530. Fine \$1,000.00. Fine not paid and
license suspended for a period of one day and thereafter until
fine paid.
Issued worthless checks in payment for malt or
brewed beverages.
April 3 and 6, 2007.

Adjudication No. 07-1552. Fine \$1,000.00 and 30 days suspension of Amusement Permit. Fine not paid and license suspended for a period of one day and thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.

June 7, 2007.

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 Count Nos. 1 and 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 No. 2 in this case.

It appears Licensee has abandoned the license. Accordingly, I impose:

Count No. 1 – Revocation of license.

Count No. 2 – Revocation of license.

ORDER:

Imposition of Revocation

THEREFORE, it is hereby ordered that the Restaurant liquor license (including all permits) No. R-AP-SS-15183, issued to Sailtae, Inc., be **REVOKED**, effective at 7:00 a.m., on Monday, June 16, 2008. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby **CANCELLED**.

Licensee is directed to remove its license from the wall on June 16, 2008 and return the license and Wholesale Liquor Purchase Permit Card and/or discount card to the Pennsylvania Liquor Control Board, Bureau of Licensing, Northwest Office Building, Capital and Forester Streets, Harrisburg, Pennsylvania 17124-0001, personally or by certified mail so as to be received no later than June 23, 2008.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 21st day of April, 2008.

Felix Thau, A.L.J.

pm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.