

Mailing Date: SEP 17 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2230
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-360022
v.	:	
	:	LID - 54515
LUIGI & GENNARO, INC.	:	
T/A LUIGI'S PIZZA	:	
14 N. MARKET ST.	:	
NANTICOKE, PA 18634-1549	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-SS-15029	:	

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 28, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Luigi & Gennaro, Inc., t/a Luigi's Pizza (Licensee), License Number R-SS-15029.

The citation¹ charges Licensee with a violation of Section 474.1(a) of the Liquor Code [47 P.S. §4-474.1(a)] and Section 7.31(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §7.31(a)]. The charge is that Licensee, by servants, agents or employees, failed to return its Restaurant Liquor license to the Board after its licensed establishment had not been in operation for a period of fifteen (15) consecutive days between August 6, 2007 and August 20, 2007.

An evidentiary hearing was conducted on August 13, 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 at the hearing.

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 June 26, 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: "Not Deliverable As Addressed, Unable to Forward, Return to Sender."
2. On June 26, 2008, I issued a Pre-Hearing Order, by first class mail, directing Licensee to submit its pre-hearing memorandum to this office. That Order reiterated the date, time and place of hearing. (N.T. 4)
3. The Bureau began its investigation on August 6, 2007 and completed it on August 27, 2007. (N.T. 6)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 28, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)
5. The Bureau received information that Licensee was no longer operating. During the fifteen days period beginning August 6, 2007 and ending August 20, 2007, Bureau Enforcement Officers visited the premises at various times during the day finding the premises was closed. There was a portable sign outside indicating the premises was closed. The Officer attempted to call the Licensee but the telephone was disconnected. (N.T. 8-15)

1. Commonwealth Exhibit No. C-2, N.T. 6.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since June 15, 2005, and has had one prior violation (Commonwealth Exhibit No. C-4, N.T. 15):

Adjudication No. 07-1397. Fine \$100.00 and 1 day suspension and continuing thereafter until the fine is paid.
Issued worthless checks in payment for purchases of malt or brewed beverages.
March 9 and 16, 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 this case.

I adopt the jointly recommended penalty of a \$100.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$100.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 11th day of September, 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.

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. 07-2230
LUIGI & GENNARO, INC.