

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. 07-2401
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-361449
	:	
SAM MORGAN INC	:	
775 FREEPORT RD	:	LID-40996
HARMAR TWP	:	
CHESWICK PA 15024-1208	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-9789	:	

ADJUDICATION

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement
Michael C. Nickles, Esq.

For Licensee
Ex Parte

BACKGROUND:

This proceeding arises out of citations that were issued on September 26 and October 23, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Sam Morgan, Inc., License Number R-AP-SS-9789 (hereinafter Licensee).

A consolidated hearing for Citation Nos. 07-2174 and 07-2401 was held on March 11, 2008 in Pittsburgh, Pa.

Citation 07-2401 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 25 and 26, 2007, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages after its Restaurant Liquor License expired on May 31, 2007, and had not been renewed and/or validated.

For Citation 07-2401 the investigation which gave rise to the citation began on August 25, 2007 and was completed on September 17, 2007. The notice of violation letter was mailed to Licensee on September 20, 2007.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is a corporation located in Allegheny County, Pennsylvania and holds Restaurant Liquor License Number R-AP-SS-9789. (N.T. 9, Ex. C-6)
2. Licensee's liquor license expired on May 31, 2007, and was not renewed. (N.T. 17, Ex. C-10)
3. On Saturday, August 25, 2007, at approximately 11:30 p.m., an enforcement officer visited the licensed premises and found a bartender in the downstairs bar rendering service of alcoholic beverages to approximately fifty patrons. (N.T. 16)
4. The officer purchased a 12-ounce bottle of Miller Lite beer for \$2.50 from the bartender and observed other patrons purchasing alcoholic beverages. (N.T.16-17)
5. The officer's visit continued into the morning of August 26, 2007, during which he observed various patrons purchasing alcoholic beverages. (N.T, 17)

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

At the consolidated hearing, Licensee's corporate officer, Gregory Glunt, did not appear although duly notified of the place and time.

Attorney Robert L. Downey appeared for a secured lien holder, August P. Maggio, and requested a copy of this adjudication.

A copy of the financial statement (UCC Form-1), waiver and letter to Mr. Glunt were entered. Although the statement authorized August P. Maggio to transfer the license, it did not authorize him to represent Licensee in a citation hearing. As such, he does not have standing in this citation hearing.

The enforcement officer testified in detail as to his purchasing alcoholic beverages at the premises after Licensee's restaurant liquor license had expired and was not renewed. An attestation from the Board was entered as Exhibit C-10.

SAM MORGAN, INC.

Citation No. 07-2401

PRIOR RECORD:

Licensee has been licensed since September 10, 1997, and has five (5) prior violations, to wit:

Citation No. 01-1427. Fine \$250.00.

1. Sales after restaurant liquor license expired on May 31, 2000 and had not been renewed and/or validated.
June 12, 2001.

Citation No. 02-0609. Fine \$1,250.00.

1. Sales after restaurant liquor license expired on May 31, 2001 and had not been renewed and/or validated
December 29, 2001, January 12, February 23 and 26, 2002.

Citation No. 02-1579. Fine \$1,250.00 and one day suspension.

1. Sunday sales after 2:00 a.m.
July 14, 2002.

Citation No. 03-0743. Fine \$250.00 and 1 Day suspension.

1. Notices on your licensed premises indicated that your licensed establishment was closed for a reason other than the suspension of the license.
March 24, 2003.
2. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.
March 24, 2003.

Citation No. 04-0516. Fine \$100.00.

1. Operated the licensed establishment without a valid health permit or license.
February 24, 2004.

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 types found in these two cases.

Licensee shall be treated as a repeat offender.

I take administrative notice that Licensee's license expired on May 31, 2007, and is currently inactive.

Counsel for the Bureau has recommended a nine (9) day suspension as the penalty in this case.

SAM MORGAN, INC.
Citation No. 07-2401

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, the following suspension will be imposed as the penalty in this case:

Nine (9) day suspension, to be served consecutively with the five (5) day suspension imposed under case 07-2174.

THEREFORE IT IS ORDERED that the restaurant liquor license of Licensee, Sam Morgan, Inc., License Number R-AP-SS-9789, be suspended for a period of nine (9) days. However, the suspension period is deferred pending reactivation of Licensee's license at which time the suspension period will be fixed by further Order.

The Bureau of Licensing shall notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the date for suspension.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 21st day of April, 2008.

Robert F. Skwaryk, J.

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.

PLCB-Office of Administrative Law Judge
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