

Mailing Date: OCT 09 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2519
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-359024
v.	:	
	:	LID - 52684
ANNA MARIE DAVIS	:	
338-340 E. NORTHAMPTON ST.	:	
WILKES-BARRE, PA 18702-5814	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-1345	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Anna Marie Davis
Sole Corporate Officer

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 7, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Anna Marie Davis (Licensee), License Number R-AP-1345.

This citation¹ contains three counts.

The first count charges Licensee with a 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)]. The charge is that on September 1, 2007, Licensee, by servants, agents or employes, sold alcoholic beverages after her Restaurant Liquor License expired on August 31, 2007, and had not been renewed and/or validated.

The second count charges Licensee with violations of Section 15.62(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §15.62(a)]. The charge is that on August 27, 28, 29, 30 and 31, 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 third count charges Licensee with a 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)]. The charge is that on August 28, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when her Restaurant Liquor License was suspended at Citation No. 06-2850X.

An evidentiary hearing was conducted on September 5, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee appeared at the hearing personally.

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 August 7, 2007 and completed it on September 4, 2007. (N.T. 18)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on October 2, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 18)

1. Commonwealth Exhibit No. C-2, N.T. 18.

Count No. 1:

3. Licensee's Restaurant liquor license expired on August 31, 2007. On September 1, 2007, Licensee was open and in operation selling alcoholic beverages. (N.T. 18-19)

4. A Bureau Enforcement Officer identified himself and advised Licensee her license had expired. Her response was that she was aware the license expired but there was a problem with respect with the renewal. The Officer indicated she needed to cease selling alcoholic beverages. Licensee did shut down all operations. (N.T. 25)

Count No. 2:

5. Pursuant to Adjudication No. 06-2850X, Licensee was originally fined. Licensee did not pay the fine timely and the license was suspended for one day, effective at 7:00 a.m., Monday, August 27, 2007 and continuing thereafter until the \$75.00 fine was paid (Official Notice). The fine was paid and Licensee was authorized to operate effective September 1, 2007.

6. On the dates charged, Licensee did not post a Suspension Placard anywhere on the licensed premises.

Count No. 3:

7. On August 28, 2007, Licensee was open and in operation selling alcoholic beverages, during a time when Licensee's liquor license was under suspension. (N.T. 20-23)

8. On August 28, 2007, a Bureau Enforcement Officer identified himself. He advised Licensee to cease selling alcoholic beverages. Licensee indicated to the Officer that she had not been getting her mail. (N.T. 23-24)

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.

PRIOR RECORD:

Licensee has been licensed since May 20, 2004, and has had four prior violations:

Adjudication No. 04-1035. Fine \$200.00.

Used loudspeakers or devices whereby music could be heard outside.

October 23, November 5 and 10, 2004.

Adjudication No. 06-2850. Fine \$75.00.

Issued worthless checks in payment for malt or brewed beverages.

August 18 and September 28, 2006.

Adjudication No. 07-0155. Fine \$250.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.

December 3, 2006.

Adjudication No. 07-0734. Fine \$150.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

Issued worthless checks in payment for malt or brewed beverages.

February 2, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count Nos. 1 and 3 and 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 No. 2 in this case.

I impose:

Count No. 1 – 3 days suspension.

Count No. 2 – \$500.00 fine.

Count No. 3 – 1 day suspension.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$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 Anna Marie Davis, License No. R-AP-1345, be suspended for a period of four days, **BEGINNING** at 7:00 a.m., on Friday, December 12, 2008, and **ENDING** at 7:00 a.m., on Tuesday, December 16, 2008.

Licensee is directed, on Friday, December 12, 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 Tuesday, December 16, 2008, at 7:00 a.m., to remove the placard of suspension and return her license to its original wall location.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 2nd day of October, 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, Pennsylvania 17110-9661

Citation No. 07-2519
ANNA MARIE DAVIS