

Mailing Date: JAN 15 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-3000
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-363878
	:	
DEEP PUB INC.	:	
427 RHAWN ST.	:	LID – 54317
PHILADELPHIA PA 19111-2226	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-6911	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 2, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against Deep Pub, Inc., License Number R-AP-SS-OPS-6911 (hereinafter “Licensee”).

An Administrative hearing was held on Thursday, July 31, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 15.62(b) of the Liquor Control Board Regulations, 40 Pa. Code Section 15.62(b), in that on November 19, 2007, Licensee, by its servants, agents or employes, posted notices on the licensed premises which stated or indicated that the licensed establishment was closed for a reason other than the suspension of the license.

FINDINGS OF FACT:

1. Officer Tara Amato visited the licensed premises pursuant to an Order of the Office of Administrative Law Judge suspending the Licensee's license. Officer Amato arrived at the premises at 2:00 p.m. on November 19, 2007 pursuant to Order and Citation No. 06-0769. The suspension was to begin November 19, 2007 at 7:00 a.m. (N.T. 5-6).

2. The officer was looking for a suspension placard. The premises was closed and locked and there was no activity. The officer saw no suspension placard but did see a cardboard sign on the front door with blue tape on it. The sign indicated the premises was closed to refinish floors and that they would reopen the next day. The officer looked in the window, but it did not appear that the floors had been done. She did indicate that the premises "looked like a wreck inside" (N.T. 6-7).

3. There was no placard from the Pennsylvania Liquor Control Board (N.T. 7).

4. The officer remained at the premises for approximately ten minutes. She inspected the building twice. She walked completely around it and then went back to her vehicle, took out her cell phone and took a picture of the sign on the front door (N.T. 8-9 and Exhibit B-3).

5. Michael McKenna is the assistant manager of the licensed premises and has been conducting the day to day operations since September, 2007. On November 19, 2007, he was there to clean the premises and make sure the placard was in the window (N.T. 15-17).

6. Mr. McKenna indicates that he put the placard in the window on Sunday, November 18, 2007 and indicated that when he arrived at the premises the next morning, someone had ripped it off the window. He went to several state stores before being able to obtain a placard and when he did find a placard, he replaced it (N.T. 17-20).

CONCLUSIONS OF LAW:

On November 19, 2007, Licensee, by its servants, agents or employes, posted notices on the licensed premises which stated or indicated that the licensed establishment was closed for a reason other than the suspension of the license, in violation of Section 15.62(b) of the Liquor Control Board Regulations, 40 Pa. Code Section 15.62(b).

Deep Pub, Inc.
Citation No. 07-3000

PRIOR RECORD:

Licensee has been licensed since April 21, 2005, and has a record of prior violations as follows:

Citation No. 06-0769. \$50.00 fine.

1. Sold malt or brewed beverages for consumption off premises.
January 18, 2006.

Citation No. 07-0483X. \$100.00 fine.

1. Issued worthless checks in payment for purchases of malt or brewed beverages.
November 14, 2006.

DISCUSSION:

The officer carefully examined the building and did not see a suspension placard posted but instead a sign indicating that the premises was closed for a reason other than the suspension. Licensee's manager claims to have posted it and that it must have been ripped off. He indicated that he then replaced it and put it on an inside window. The officer testified credibly that she made careful observation and did not see any placard posted.

The premises was closed, however, the posting of the suspension is an essential part of the penalty. The Court is satisfied that the premises was closed for the one day, however, this time Licensee will be closed and the placard will be properly posted.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that the Restaurant Liquor License of Deep Pub, Inc., License Number R-AP-SS-OPS-6911, be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Monday, April 6, 2009 and **ENDING** at 7:00 a.m. on Tuesday, April 7, 2009.

Deep Pub, Inc.
Citation No. 07-3000

Licensee is directed on Monday, April 6, 2009 at 7:00 a.m. to place the enclosed 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.

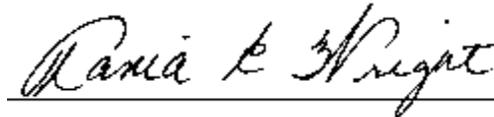
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Tuesday, April 7, 2009 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 13th day of January, 2009.

A handwritten signature in cursive script that reads "Tania E. Wright". The signature is written in black ink and is positioned above a horizontal line.

Tania E. Wright, J.

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