

Mailing Date: OCT 09 2008

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF :
LIQUOR CONTROL ENFORCEMENT :
:
v. :
:
D T D INC :
T/A MITCHELL'S TAVERN & :
RESTAURANT :
4632 CENTRE AVENUE :
PITTSBURGH PA 15213-1556 :
:
ALLEGHENY COUNTY :
LICENSE NO. R-AP-SS-12217 :

Citation No. 08-0412

Incident No. W04-366804

LID-15398

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:
Nadia L. Vargo, Esquire

For Licensee:
J. Michael Baggett, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 7, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against D. T. D., Inc., T/A Mitchell's Tavern & Restaurant, License Number R-AP-SS-12217 (hereinafter Licensee).

The citation charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations, [40 Pa. Code, §15.62(a)], in that on February 4, 2008, Licensee, by its servants, agents, or employees, 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 investigation which gave rise to the citation began on December 20, 2007 and was completed on February 4, 2008. The notice of violation letter was mailed to Licensee on February 18, 2008.

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An evidentiary hearing was held on this matter on September 9, 2008, in Pittsburgh, Pennsylvania.

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-12217. (N.T. 4).
2. The Supplemental Order under Citation No. 07-1601 imposed a one day suspension of Licensee's liquor license to begin on Monday, February 4, 2008, at 7:00 a.m. and to end on Tuesday, February 5, 2008 at 7:00 a.m. (N.T. 8, Exhibit C-6)
3. On Sunday, February 3, 2008, Licensee duct taped the Notice of Suspension placard to the establishment's all steel front door. (N.T. 19)
4. On Monday, February 4, 2008, at 7:05 p.m., an enforcement officer visited the licensed premises and observed that it was closed for business but did not find a Notice of Suspension placard posted. (N.T. 10-11)
5. On Tuesday, February 5, 2008, Licensee returned to the licensed premises and found that the suspension placard had been removed without his knowledge. (N.T. 20)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d (Pa. Cmwlth. 1982). The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black's Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

At the hearing held on the matter, the enforcement officer and Licensee's corporate president testified. The officer conducted a suspension check of the licensed premises and found no suspension placard as required under the Supplemental Order in case no. 07-1601. Licensee testified that he posted the placard as required and someone removed it without his knowledge.

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This is a case of strict liability. Because the suspension placard was not posted during the entire period of suspension, I must find a violation and sustain the citation.

PRIOR RECORD:

Licensee has been licensed since October 20, 1988, and has two (2) prior violations, to wit:

Citation No. 90-1286. Fine \$1,050.00.

1. Sales to a minor.
2. Failed to constantly and conspicuously expose restaurant liquor license under a transparent substance on your licensed premises.

Citation No. 07-1601. Fine \$450.00 and 1 day suspension with thereafter conditions.

1. Failed to clean coils at least once every 7 days.
May 19, 2007.
2. Not a bona fide restaurant in that food items were insufficient
May 19, 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.

After due consideration of the circumstances giving rise to the citation and licensee's citation history, a fine of \$200.00 will be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered D. T. D., Inc., T/A Mitchell's Tavern & Restaurant, License Number R-AP-SS-12217, pay a fine of \$200.00 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, Licensees' license shall be suspended or revoked.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 2nd day of October, 2008.

Robert F. Skwaryk, J.

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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

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