

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. 08-0545
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-366958
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 April 11, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Anna Marie Davis (Licensee), License Number R-AP-1345.

This citation<sup>1</sup> contains two counts.

The first 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 February 4, 5 and 6, 2008, Licensee, by 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 second 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 February 4 and 6, 2008, Licensee, by servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when her Restaurant Liquor License was suspended at Citation Nos. 07-0155 and 07-0734X.

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 December 26, 2007 and completed it on February 7, 2008. (N.T. 6)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 25, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count No. 1:

3. Pursuant to Adjudication Nos. 07-0155 and 07-0734X, Licensee was required to pay fines in the amounts of \$250.00 and \$150.00, respectively. Licensee failed to pay those fines timely. The license was consequently suspended for a total of two days, effective at 7:00 a.m., Monday, February 4, 2008 and continuing thereafter until the fines were paid. (Official Notice)
4. On the dates charged, a Bureau Enforcement Officer conducted a suspension check finding there was no Suspension Placard posted.

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1. Commonwealth Exhibit No. C-2, N.T. 7.

Count No. 2:

5. On February 4 and 6, 2008, Licensee was open and in operation selling alcoholic beverages. (N.T. 10)

6. The Officer identified himself on the visit of February 4, 2008 and advised Licensee the license was suspended and she was to cease selling alcoholic beverages. Licensee subsequently did pay the fines and was authorized to open at 5:00 p.m., Thursday, February 7, 2008. (N.T. 13)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Count No. 1 and 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 No. 2 in this case.

Licensee explains she did pay the fines timely, but the payments were misguided to the wrong place. Licensee further explains she went immediately to Harrisburg on February 5, 2008 to pay the fines and thought everything had been cleared up. I do not doubt Licensee's sincerity. What concerns me is that Licensee seems not to understand how the process works. Accordingly, I impose:

Count No. 1 – \$300.00 fine.  
Count No. 2 – 2 days suspension.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$300.00 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 two days, **BEGINNING** at 7:00 a.m., on Tuesday, December 16, 2008, and **ENDING** at 7:00 a.m., on Thursday, December 18, 2008.

Licensee is directed, on Tuesday, December 16, 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 Thursday, December 18, 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 2<sup>nd</sup> day of October, 2008.

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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

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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. 08-0545  
ANNA MARIE DAVIS