

Mailing Date: DEC 16 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0649
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-367338
v.	:	
	:	LID - 40414
FALLON HOUSE, INC.	:	
131 E. WATER ST.	:	
LOCK HAVEN, PA 17745-1343	:	
	:	
	:	
	:	
CLINTON COUNTY	:	
LICENSE NO. H-AP-1742	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Dolores Mantle, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 24, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against FALLON HOUSE, INC., License Number H-AP-1742 (hereinafter "Licensee").

The citation contains three counts.

The first count 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 February 1, 2008, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when its Hotel Liquor License was suspended at Citation No. 07-1864.

The second count charges Licensee with violation of Section 15.62(b) of the Liquor Control Board Regulations [40 Pa. Code §15.62(b)] in that on February 2, 2008, 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.

The third count 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 1, 2, 4 and 6, 2008, Licensee, by its 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 investigation which gave rise to the citation began on January 2, 2008 and was completed on February 6, 2008; and notice of the violation was sent to Licensee by Certified Mail on March 3, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 5, 2008 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1, 2 AND 3

1. On December 20, 2007 this office mailed an Adjudication at Citation No. 07-1864. The Adjudication contained an order which required Licensee to pay a fine of \$350.00. The citation further ordered that Licensee's hotel liquor license be suspended for a period of one day beginning at 7:00 a.m. on Monday, January 28, 2008 and continuing thereafter until: (1) Licensee has forwarded a certification verifying that the licensed premises is being operated as a bona fide hotel having a public dining room in which food is regularly prepared and having a current menu; and (2) said certification has been approved and the suspension terminated by further order (Administrative Notice and N.T. Exhibit C-3).

2. On February 6, 2008 this office issued a Supplemental Order at Citation No. 07-1864 acknowledging receipt of the \$350.00 fine, approving a certification submitted by Licensee, vacating further suspension and ordering that Licensee might resume operation of the licensed premises effective 12:00 noon on Wednesday, February 6, 2008.

3. On January 28, 2008, an officer of the Bureau went to the licensed premises to determine whether a suspension notice was properly posted. The officer found the suspension notice posted in a window located to the left of the front door going into the main entrance of the licensed premises (N.T. 12-13).

4. On February 1, 2008, the officer entered the licensed premises at 1:50 a.m. As the officer entered the licensed premises, she did not observe any suspension placard posted on the exterior of the premises. She found the premises open and operating. Upon entry she purchased an alcoholic beverage (N.T. 13-14).

5. The officer, while on the premises on February 1, 2008, observed approximately 30 patrons present (N.T. 15).

6. On February 1, 2008 the officer contacted Terry Mantle of the licensed premises to let him know that Licensee had not completed the thereafter conditions in order to be open. She also spoke with Delores Mantle after speaking with Terry Mantle (N.T. 15-16).

7. On February 2, 2008 the officer went to the licensed premises to determine if it was open and operating and if the suspension placard was posted. The officer found that no suspension was posted but there was another sign reading that pipes in the bar were broken and that the premises was closed for the weekend (N.T. 16 and Exhibit C-5).

8. On February 4, 2008 the officer visited the licensed premises to determine if a suspension notice placard was properly posted. She found no sign posted on the exterior of the premises (N.T. 18).

9. On February 6, 2008 the officer again returned to the licensed premises at 7:11 a.m. and found no placard posted on the licensed premises (N.T. 18-19).

10. The only date that the licensed premises was open while under suspension was February 1, 2008 (N.T. 21-22).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since July 8, 1997, and has had four prior violations:

Citation No. 01-2020. Fine \$1,000.00.

1. Sales to a minor.
2. Minor frequenting.

Citation No. 03-1678. Fine \$200.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m. July 27, 2003.

Citation No. 05-2185. Fine \$250.00.

1. Used loudspeakers or devices whereby the sound of music could be heard outside. June 16, September 10 and 15, 2005.

Citation No. 07-1864. Fine \$350.00 and 1 day suspension with thereafter conditions.

1. Not a bona fide restaurant in that food items were insufficient and/or you failed to provide food upon request. March 2, April 12 and June 21, 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 1 of this case.

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 Counts 2 and 3 of this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 1 – two days suspension
- Count 2 – one day suspension
- Count 3 – one day suspension

ORDER

THEREFORE, IT IS HEREBY ORDERED that the hotel liquor license (including all permits) of FALLON HOUSE, INC., License No. H-AP-1742 be suspended for a period of four days **BEGINNING** at 7:00 a.m. on Wednesday, February 4, 2009 and **ENDING** at 7:00 a.m. on Sunday, February 8, 2009.

Licensee is directed on February 4, 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 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 February 8, 2009 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 1ST day of December, 2008.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", is written above a horizontal line.

Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.