

Mailing Date: OCT 27, 2008

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

PENNSYLVANIA STATE  
POLICE, BUREAU OF  
LIQUOR CONTROL ENFORCEMENT

v.

LA FAMIGLIA PIZZERIA &  
SPORTSBAR, LLC  
625 MAIN RD.  
DALLAS, PA 18612-9001

LUZERNE COUNTY  
LICENSE NO. R-AP-SS-17494

Citation No. 08-0680

Incident No. W02-3366140

LID - 57975

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Craig Strong, Esquire

For Licensee  
NO APPEARANCE

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on April 16, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against LA FAMIGLIA PIZZERIA & SPORTSBAR, LLC, License Number R-AP-SS-17494 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] in that Licensee, by its servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding February 12, 2008.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 7101 of the Tax Reform Code of 1971 [72 P.S. §7101] in that Licensee, violated the Tax Reform Code of 1971, in that it failed and/or refused to remit in a timely manner, to the Commonwealth of Pennsylvania, Department of Revenue, sales tax due and owing for the period July 1, 2007 through December 31, 2007, in the amount of \$565.00.

The investigation which gave rise to the citation began on December 7, 2007 and was completed on March 5, 2008; and notice of the violation was sent to Licensee by Certified Mail on March 12, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 24, 2008 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 625 Main Rd., Dallas, PA 18612-9001 by certified mail, return receipt requested and by first class mail on June 6, 2008. The notice set forth the date and time of the hearing as July 24, 2008 at 1:00 p.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

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:

COUNT 1

1. On January 23, 2008, an officer of the Bureau arrived at the licensed premises to conduct a routine inspection. The officer met with the principal of Licensee, Mr. Hunter. She left a request for records for the period from July 1, 2007 up to and including January 30, 2008, the date she intended to go back to review the records. The records requested included beer, liquor and food invoices, sales tax records, utility bills and payroll records (N.T. 7-8).

2. Prior to January 30, 2008, the officer received a call from Mr. Hunter saying that he did not have the record ready. She then received a call from the attorney for Licensee saying there was a death in the family (N.T. 8).

3. The officer finally did get to review records in February of 2008. Mr. Hunter told the officer that he didn't have all the liquor and beer purchase invoices available because they were damaged by a leaking roof inside the premises (N.T. 8).

4. The officer went to the state store and reviewed some of the liquor invoices. Of the 28 liquor invoices, 11 were originals and 14 of them were copies which were provided by the manager of the state store in Dallas, PA (N.T. 8).

5. The officer determined that Licensee did not have any beer invoices (N.T. 8).
6. The officer found that Licensee had no payroll records. Mr. Hunter told the officer that he didn't have any employees (N.T. 8-9).
7. Laura Williams was employed by Licensee from August, 2007 until some time right after October 31, 2007 (N.T. 16-17).
8. Williams worked on the premises as a waitress and for a short time as a bartender. She was to be paid \$5.00 an hour and was supposed to accumulate up to \$75.00 for the week. She was paid cash once. Part of her employment was to serve alcohol. She was instructed to ring up sales of alcohol by using the no sale key on the register (N.T. 17-18).
9. Michael Boback was employed by Licensee on the licensed premises from August 15, 2007 until the middle of November, 2007. His job was basically to manage the place. He opened and closed the establishment, ran the bar's security and the kitchen. He was initially supposed to be paid a percentage of the receipts from any band that was booked. On the nights that he was involved in security, which was normally Thursday, Friday and Saturday nights he was supposed to be paid \$75.00 per night (N.T. 19-20).
10. Boback was paid with cash. He would serve liquor and beer on the premises. All sales of these items were rung up on the cash register using the no sale key (N.T. 21-22).
11. Christopher Weiss was employed on the licensed premises for a period of about eight weeks beginning at the beginning of September, 2007. His duties were as a cook and he would help clean up around the bar. He was supposed to be paid \$8.00 an hour for his work. He was paid once, and it was not the full amount he was due (N.T. 23). On a few occasions he made sales of beer and/or liquor. He was instructed when he did so to use the no sale button the cash register to ring the sale (N.T. 23-24).

COUNT 2

12. As of July 24, 2008, Licensee owed a balance of \$654.55 for sales tax due for sales made during the period from July 1, 2007 through December 31, 2007 (N.T. 12-13).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since June 14, 2007, and has had one prior violation:

Citation No. 07-1968X. Fine \$150.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for purchases of malt or brewed beverages. June 16, 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.

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

Count 1 - \$500.00 fine  
Count 2 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee LA FAMIGLIA PIZZERIA & SPORTSBAR, LLC, pay a fine of \$750.00 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.

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

Dated this 15TH day of October, 2008.

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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.**

**Detach here and submit stub with payment**

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The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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

Citation No. 08-0680  
La Famiglia Restaurant  
& Sportsbar, LLC