

Mailing Date: FEB 11 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0730
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-369652
v.	:	
	:	LID - 57881
JOHN AND JOSEPH, INC.	:	
T/A BEST WESTERN OF	:	
WAYNESBORO	:	
239 W. MAIN ST.	:	
WAYNESBORO, PA 17268-1521	:	
	:	
	:	
FRANKLIN COUNTY	:	
LICENSE NO. H-SS-4837	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew Lovette, Esquire

For Licensee
Alan G. John, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 1, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against JOHN AND JOSEPH, INC., License Number H-SS-4837 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Sections 491(1), 492(2), 492(3) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2), 492(3) and 4-493(16)] in that from February 1 through 14, 2008, Licensee, by its servants, agents or employees, sold alcoholic beverages after its Hotel Liquor License expired on January 31, 2008.

The second count charges Licensee with violation of Section 5.16 of the Liquor Control Board Regulations [40 Pa. Code §5.16] in that on February 14 and March 11, 2008, and divers occasions within the past year, Licensee's manager failed to devote full time and attention to the operation of the licensed business.

The investigation which gave rise to the citation began on February 14, 2008 and was completed on March 11, 2008; and notice of the violation was sent to Licensee by Certified Mail on March 21, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 12, 2008 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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:

COUNT 1

1. Licensee's hotel liquor license expired on January 30, 2008, and Licensee did not have authority to operate during the period from February 1, 2008 through February 14, 2008 (N.T. Exhibit C-5).

2. On February 14, 2008, an officer of the Bureau arrived at the licensed premises and proceeded to the check in area of the motel. He removed a six pack of bottles of Bud Light beer from a cooler (N.T. 11).

3. The officer placed the beer on the check in counter and employe rang up the sale. The officer paid \$6.50 for the purchase of the six pack of beer. The beer was delivered to him (N.T. 12).

4. The officer identified himself to Licensee's employe Joe Carvalho. Upon request by the officer, Mr. Carvalho provided information showing that Licensee had made sales of beer during the period from February 1 through February 14, 2008 (N.T. 15-20 and Exhibit C-4).

COUNT 2

5. During the period from February 1 through March 11, 2008, Alan G. John was listed in the records of Liquor Control Board as the Board approved manager of the licensed premises (N.T. 22).

6. Although the licensed premises was open and operating 18 hours per day, Mr. Johns spent only 20 hours per week at the licensed premises (N.T. 22-23, 40-41).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since August 14, 2007, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 Count 2 of this case.

With respect to Count No. 1, Licensee's principal, Mr. Alan John being a new Licensee was victimized by a break down in the tax clearance process which caused the lack of a tax clearance when one should have been issued. Consequently, although Mr. John had paid all the correct fees and was entitled to have a license, none was issued because of this problem. Because the violation in this case is merely a technical one, a minimum penalty will be imposed.

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

Count 1 – one day suspension
Count 2 - \$100.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee JOHN AND JOSEPH, INC., pay a fine of \$100.00 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.

IT IS FURTHER ORDERED that the hotel liquor license (including all permits) of JOHN AND JOSEPH, INC., License No. H-SS-4837 be suspended for a period of one day **BEGINNING** at 7:00 a.m. on Monday, April 6, 2009 and **ENDING** at 7:00 a.m. on Tuesday, April 7, 2009.

Licensee is directed on 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 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 April 7, 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 3rd day of February, 2009.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over 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.

Detach here and submit stub with payment

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. 08-0730
John and Joseph, Inc.