

Mailing Date: MAY 13 2009

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

| | | |
|------------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 08-1198 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W02-371800 |
| v. | : | |
| | : | LID - 41562 |
| BILL'S HILLTOP, INC. | : | |
| T/A BILL'S HILLTOP | : | |
| 715 JACKSON AVE. | : | |
| SUSQUEHANNA (DEPOT) | : | |
| SUSQUEHANNA, PA 18847-1533 | : | |
| | : | |
| SUSQUEHANNA COUNTY | : | |
| LICENSE NO. R-AP-SS-EHF-4941 | : | |

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
William J. Perry, Sr.
Sole Corporate Officer and
Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 3, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Bill's Hilltop, Inc., t/a Bill's Hilltop (Licensee), License Number R-AP-SS-EHF-4941.

This citation¹ contains two counts.

The first count charges Licensee with violations of Section 404 of the Liquor Code [47 P.S. §4-404]. The charge is that during the period July 1, 2007 through March 17, 2008, Licensee's licensed corporation was not the only one pecuniarily interested in the operation of the licensed business.

The second count charges Licensee with a violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that on April 2, 2008, Licensee, by servants, agents or employes, operated its licensed establishment without a valid health permit or license, which expired on January 31, 2008.

An evidentiary hearing was conducted on April 9, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. The matter was submitted by way of Stipulation of Facts. Licensee was represented by its Sole Corporate Officer and Manager, Mr. William J. Perry, Sr.

After review of the transcript of that proceeding, the following Stipulation of Facts and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 27, 2008 and completed it on April 9, 2008. (N.T. 13)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on May 5, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 11)

Count No. 1:

3. During the period charged, Licensee's Sole Corporate Officer and Manager, Mr. P., leased the licensed business to three individuals acting as a partnership. According to the Agreement, the partnership operated the business. On or after August 1, 2007, Mr. P. had nothing to do with the business. Mr. P. received \$1,250.00 a month. On March 17, 2008, all of the payments ceased. (N.T. 14-20)

1. Commonwealth Exhibit No. C-2, N.T. 11.

Count No. 2:

4. Licensee's health license expired on January 31, 2008. On April 2, 2008, Licensee was open and in operation selling alcoholic beverages and food. (N.T. 14-15)

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 January 6, 1998, and has had three prior violations:

Adjudication No. 00-1970. Fine \$300.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (sports pool).

Adjudication No. 06-1251C. Fine \$1,250.00 and R.A.M.P. Training mandated.

Sales to a minor.
April 17, 2006.

Adjudication No. 08-0561X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages.
September 20 and December 28, 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.

The leasing of the license was arranged on advice of counsel. Mr. P. consequently thought the arrangement was legal. Because the lease agreement violates the Liquor Code, the lease agreement is void.

I impose:

Count No. 1 - \$500.00 fine.
Count No. 2 - \$100.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$600.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30TH day of April, 2009.



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

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

Citation No. 08-1198
BILL'S HILLTOP, INC.