

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. 08-1369
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-373968
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 July 2, 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 citation¹ 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 May 5, 2008, Licensee, by servants, agents or employes, operated her licensed establishment without a valid health permit or license, which expired on April 30, 2008.

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 May 5, 2008 and completed it on May 6, 2008. (N.T. 28)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on May 20, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 28)
3. Licensee's Municipal Health License expired on April 30, 2008. A Bureau Enforcement Officer visited the premises on May 5, 2008 at 3:40 p.m. Licensee was open and in operation selling alcoholic beverages. The Health License on the wall was the one that expired on April 30, 2008. Licensee was cooperative and ceased operations at that time. (N.T. 29-30)
4. Licensee simply forgot about renewing her Health License. (N.T. 30-31)

1. Commonwealth Exhibit No. C-2, N.T. 28.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **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 this case.

I have an abiding sense that Licensee is attempting to operate legitimately but seems to be overwhelmed by the responsibility. Licensee has assured me she will take measures to stay on top of all matters. Accordingly, I impose a \$250.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$250.00 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 2nd day of October, 2008.

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

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ANNA MARIE DAVIS