

Mailing Date: JAN 20 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1665
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-372964
v.	:	
	:	LID – 57521
DAKOTAS STEAKHOUSE, LLC	:	
T/A DAKOTAS STEAKHOUSE &	:	
TAVERN	:	
100 TOM X RD.	:	
MARSHALLS CREEK, PA 18335	:	
	:	
	:	
MONROE COUNTY	:	
LICENSE NO. R-AP-SS-21010	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 30, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Dakotas Steakhouse, LLC, t/a Dakotas Steakhouse & Tavern (Licensee), License Number R-AP-SS-21010.

This citation¹ contains two counts.

The first count charges Licensee with violations 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)]. The charge is that from February 20 through May 4, 2008, Licensee, by servants, agents or employes, sold alcoholic beverages without a license after the temporary authority granted to Licensee by the Pennsylvania Liquor Control Board had expired on September 30, 2007.

The second count charges Licensee with violations of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated March 28 and April 4, 2008, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

An evidentiary hearing was conducted on December 17, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on October 30, 2008 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked: "Not Deliverable As Addressed, Unable to Forward."
2. The Bureau began its investigation on April 16, 2008 and completed it on June 18, 2008. (Commonwealth Exhibit No. C-1, N.T. 5)
3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 30, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)

Count No. 1:

4. During the period charged, Licensee continued to operate and sell alcoholic beverages although its license expired September 30, 2007. (N.T. 7-9)

1. Commonwealth Exhibit No. C-2, N.T. 5.

Count No. 2:

5. On March 28, 2008, Licensee issued a check (No. 1288) in the amount of \$244.97 to an Importing Distributor/Distributor for the purchase of beer. The check was dishonored due to insufficient funds. (N.T. 9-10)

6. On April 4, 2008, Licensee issued a check (No. 1294) in the amount of \$131.33 to an Importing Distributor/Distributor for the purchase of beer. The check was dishonored due to insufficient funds.

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 August 6, 2007, and has had no prior violations.

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 No. 1 and 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 No. 2 in this case.

As the license expired on September 30, 2007 and, to date, has not been renewed, and Licensee has further not obeyed process, it appears this license has been abandoned, accordingly, I impose:

- Count No. 1 – Revocation of license.
- Count No. 2 – Revocation of license.

ORDER:

Imposition of Revocation

THEREFORE, it is hereby ordered that the Restaurant liquor license (including all permits) No. R-AP-SS-21010, issued to Dakotas Steakhouse, LLC, t/a Dakotas Steakhouse & Tavern, be **REVOKED**, effective at 7:00 a.m., on Monday, March 30, 2009. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby **CANCELLED**.

As Licensee's Restaurant liquor license is in an inactive status, there is no license to be returned. Accordingly, the Bureau of Licensing of the Pennsylvania Liquor Control Board is hereby directed to mark their records that this license is revoked, effective at 7:00 a.m., Monday, March 30, 2009.

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 15th day of January, 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.