

Mailing Date: FEB 19 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1826
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-375570
	:	
MARLEC INC	:	
T/A OSCAR'S PUB & RESTAURANT	:	LID-28943
2147 W 12 <sup>TH</sup> ST	:	
ERIE PA 16505-4804	:	
	:	
	:	
ERIE COUNTY	:	
LICENSE NO. R-AP-11270	:	

**BEFORE:** JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:  
Emily L. Gustave, Esquire

For Licensee:  
Lawrence L. Kinter, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 1, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Marlec, Inc., T/A Oscar's Pub & Restaurant, License Number R-AP-11270 (hereinafter Licensee).

The citation charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)], in that on June 16, 2008, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

The investigation which gave rise to the citation began on June 4, 2008 and was completed on June 25, 2008. The notice of violation letter was mailed to Licensee on July 21, 2008.

An evidentiary hearing was held on this matter on January 14, 2009, in Erie, Pennsylvania.

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Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Erie County, Pennsylvania and holds Restaurant Liquor License Number R-AP-11270. (N.T. 4).

2. The adjudication under Citation No. 08-0295 imposed a one day suspension of Licensee's liquor license to begin on Monday, June 16, 2008, at 7:00 a.m. and to end on Tuesday, June 17, 2008 at 7:00 a.m., and to continue thereafter until R.A.M.P. certification was achieved. (N.T. 7)

3. On May 13, 2008, Licensee obtained R.A.M.P. certification.

4. On Monday, June 16, 2008, at approximately 10:35 a.m. Licensee's employee, Heather Cook, posted the suspension placard in a front window because it would not fit in the front door window. (N.T. 15-18, 26)

5. On Monday, June 16, 2008, at 4:00 p.m., an enforcement officer visited the licensed premises to conduct a suspension check and observed that it was open for business, but did not see a Notice of Suspension placard properly posted and visible from the outside of the premises. (N.T. 7-8)

6. Licensee's bartender informed the enforcement officer that the establishment was not serving alcohol due to insurance purposes and the officer purchased a soda for \$2.70. (N.T. 7-8)

7. The enforcement officer observed that the establishment did not serve alcoholic beverages to patrons as the entered the premises. (N.T. 8)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified in detail that he conducted a suspension check at 4:00 p.m. and did not see the suspension placard properly posted and visible from the outside.

Licensee's witnesses testified that the suspension placard was posted by an employee, Heather Cook, beginning at 10:35 a.m. Monday, June 16, 2008, until the next morning, when the president took it down when he came to work. Heather Cook appeared at the hearing and testified that she posted it, but she did not testify as to how it was facing. (N.T. 17-21)

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Title 40 Pa. Code Section 15.62(a) of the Liquor Control Board Regulations, provides as follows:

- (a) In the case of a suspension of a license, the Order of the Administrative Law Judge shall direct the licensee to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the licensed premises, a notice of the suspension in the form and size and containing the provisions as the Office of Administrative Law Judge may require. The notice shall remain posted during the entire period of Suspension.

I find the testimony of all witnesses to be credible. However, I also find by circumstantial evidence that the placard was improperly posted so as to be visible from the inside. Additionally, Licensee's president admitted that the suspension placard was not posted until approximately 10:30 a.m., and not at 7:00 a.m., as ordered. Therefore, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since February 7, 1992, and has five (5) prior violations, to wit:

Citation No. 01-1362. Fine \$50.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 01-1897. Fine \$50.00.

1. Transported malt or brewed beverages in a vehicle not registered with the Pennsylvania Liquor Control Board.

Citation No. 07-1145C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.  
April 18, 2007.

Citation No. 08-0295. Fine \$250.00 and 1 day suspension with thereafter conditions.

1. Failed to comply with the order of the administrative law judge mandating R.A.M.P. training.  
November 8 2007 through January 9, 2008.

Citation No. 08-0836C. Fine \$1,800.00.

1. Sales to a minor.  
March 17, 2008.

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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 take administrative notice that Licensee obtained R.A.M.P. certification on May 13, 2008.

After due consideration of the circumstances giving rise to the citation and the Licensee's citation history, a fine of \$250.00 shall be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Marlec, Inc., T/A Oscar's Pub & Restaurant, 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.

**JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.**

Dated this 17th day of February, 2009.



Robert F. Skwaryk, J.

**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

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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 17110-966

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