

Mailing Date: MAY 11 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1984
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-374731
v.	:	
	:	LID - 50865
JACQUELINE J. HOFFMAN	:	
T/A ROSEDALE	:	
2324 SAN SOUCI PKWY.	:	
WILKES-BARRE, PA 18706-5006	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-13663	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Jacqueline J. Hoffman
Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 27, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Jacqueline J. Hoffman, t/a Rosedale (Licensee), License Number R-AP-13663.

This citation¹ contains two counts.

The first count charges Licensee with violations of Section 5.51(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.51(a)]. The charge is that from June 3 through 30, 2008, Licensee, by servants, agents or employes, failed to clean coils, tap rods and connections at least once every seven (7) days.

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 June 30, 2008, Licensee, by servants, agents or employes, operated her licensed establishment without a valid health permit or license, which expired on May 31, 2008.

An evidentiary hearing was conducted on April 8, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee represented herself. I advised Licensee of her right to counsel, to cross-examine witnesses and to present testimony. Licensee acknowledged that she understood those rights and that she was prepared to go forward without an attorney. (N.T. 5)

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 15, 2008 and completed it on July 15, 2008. (N.T. 12)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 4, 2008, as amended. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 13)

Count No. 1:

3. On June 30, 2008, a Bureau Enforcement Officer visited the premises entering at about 5:45 p.m. The premises was open and in operation selling alcoholic beverages. The Officer identified herself to Licensee. The Officer reviewed Licensee's coil cleaning records and noticed the last three entries prior to the visit of June 9, 2008. The Officer showed the records to Licensee indicating there was no cleaning listed for June 16 and June 23, 2008. Licensee advised the Officer the beer tap dispensing system had not been cleaned for several weeks while the premises was closed. (N.T. 15-22)

1. Commonwealth Exhibit No. C-2, N.T. 14.

Count No. 2:

4. Licensee's health license expired on May 31, 2008 but Licensee was open and in operation selling food and alcoholic beverages on June 30, 2008. (N.T. 28-29)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. The Bureau has **failed** to prove that from June 3 through 30, 2008, Licensee, by servants, agents or employes, failed to clean coils, tap rods and connections at least once every seven (7) days.²

Count No. 2:

3. **Sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since February 28, 2003, and has had six prior violations (Commonwealth Exhibit No. C-3):

Adjudication No. 06-2358. Fine \$1,250.00.
Sales after the restaurant liquor license expired and had not been renewed and/or validated.
September 1, 2006.

Adjudication No. 07-0081X. Fine \$1,000.00.
Issued worthless checks in payment for malt or brewed beverages.
November 17, 2006.

2. If Licensee is closed and not operating there is no obligation during that interval to clean the beer dispensing system.

Adjudication No. 07-0457. 5 days suspension.
Sales after the restaurant liquor license expired and
had not been renewed and/or validated.
January 10, 23 and 31, 2007.

Adjudication No. 07-1062X. Fine \$150.00.
Issued worthless checks in payment for purchases
of malt or brewed beverages.
February 2, 2007.

Adjudication No. 07-2296C. Fine \$1,250.00 and 1 day
suspension.
Sales to a minor.
August 28, 2007.

Adjudication No. 08-0137. Fine \$250.00.
Discounted the price of alcoholic beverages for a
Period or periods in excess of 2 hours in a business day.
November 30, 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 Count No. 2 in this case.

I impose:

Count No. 1 – Dismissed.
Count No. 2 - \$100.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee 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.

Dismissal of Count No. 1:

IT IS FURTHER ORDERED THAT Count No. 1 of Citation No. 08-1984, issued against Jacqueline J. Hoffman, is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 7th day of May, 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. 08-1984
JACQUELINE J. HOFFMAN