

Mailing Date: FEB 25 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2456
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-381814
v.	:	
	:	LID - 58156
DARIUS D. KAYE	:	
T/A BLACK DOG DELI	:	
5 LEE PARK AVE.	:	
HANOVER TOWNSHIP, PA 18706-4013	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. E-SS-1259	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL STRONG  
LICENSEE: NO APPEARANCE**

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 17, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against DARIUS D. KAYE, License Number E-SS-1259 (hereinafter "Licensee").

The citation charges Licensee with violation of Sections 492(2), 492(3) and 493(16) of the Liquor Code [47 P.S. §§4-492(2), 4-492(3) and 4-493(16)] in that on September 23, 2008, Licensee, by his servants, agents or employees, sold alcoholic beverages after his Eating Place Retail Dispenser license expired on August 31, 2008, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on September 24, 2008 and was completed on September 24, 2008; and notice of the violation was sent to Licensee by Certified Mail on October 1, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 23, 2009 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. Another hearing was held on October 21, 2009.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Administrative notice is hereby taken that the eating place liquor license held by Licensee expired on August 31, 2008, and, as of September 23, 2008, Licensee did not have authority from the Liquor Control Board to dispense alcoholic beverages.

2. On September 23, 2008 a Revenue Enforcement Collection Agent from the Pennsylvania Department of Revenue entered the licensed premises in an undercover capacity. Upon entry she found the premises to be open for business (N.T. 9-10).

3. The aforementioned revenue agent purchased a 6-pack of Heineken beer on the premises on that date (N.T. 10).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since August 8, 2007, and has had one prior violation:

Citation No. 08-0665. 1 day suspension deferred.

1. Sales without a license after the temporary authority granted to you by the Board had expired. February 25, 2008.

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 this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee DARIUS D. KAYE, pay a fine of \$1,250.00 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 pending final resolution of the penalty in this matter.

Dated this 8<sup>TH</sup> day of February, 2010.



Daniel T. Flaherty, Jr., J.

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**MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.**

**Detach here and submit stub with payment**

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make 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. 08-2456  
Darius D. Kaye