

Mailing Date: MAY 04 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2551
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-379241
v.	:	
	:	LID - 35651
NEVE ENTERPRISES, INC.	:	
T/A SORRENTO PIZZA	:	
104 ½ N. MARKET ST.	:	
DUNCANNON, PA 17020	:	
	:	
	:	
PERRY COUNTY	:	
LICENSE NO. R-AP-SS-15898	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Steve C. Nicholas, Esquire
2215 Forest Hills Drive
Suite 37
Harrisburg, PA 17112-1099

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 23, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Neve Enterprises, Inc., t/a Sorrento Pizza (Licensee), License Number R-AP-SS-15898.

The citation¹ charges Licensee with a violation of Section 15.62(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §15.62(a)]. The charge is that on September 15, 2008, Licensee, by 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.

An evidentiary hearing was conducted on April 1, 2009 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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 August 8, 2008 and completed it on September 21, 2008. (N.T. 6-7)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on October 16, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
3. Pursuant to Adjudication No. 06-2438, a Supplemental Order was issued suspending Licensee for a period of seven days for failure to pay a \$3,500.00 fine. The seven days suspension began at 7:00 a.m., Monday, September 15, 2008 and continued thereafter until the fine of \$3,500.00 was paid. On September 16, 2008, a Third Supplemental Order was issued vacating the thereafter conditions and limiting the suspension to seven days, beginning at 7:00 a.m., Monday, September 15, 2008 and ending at 7:00 a.m., Monday, September 22, 2008.
4. On September 15, 2008, at 3:10 p.m., a Bureau Enforcement Officer arrived at the premises noting that there was no Suspension Placard posted. The Officer entered the premises which was open and requested an alcoholic beverage. The Officer was refused service. The employe commented Licensee was not permitted to serve alcoholic beverages. (N.T. 7-9)
5. At 6:40 p.m., on September 15, 2008, a Bureau Enforcement Officer noted the Suspension Placard was conspicuously posted on one of the doors entering into the premises. Licensee was open. The Officer entered and attempted to obtain alcoholic beverage services but was refused. (N.T. 13)

1. Commonwealth Exhibit No. C-2, N.T. 6.

6. The Suspension Placard remained posted and Licensee did not sell any alcoholic beverages during the remainder of the suspension period. (N.T. 14)

7. At the hearing for Adjudication No. 06-2438, Licensee was represented by counsel. Licensee received no communication from counsel regarding that Adjudication. On September 12, 2008, at about 12:30 p.m., Licensee's Treasurer/Stockholder, Ms. N. received a call from Licensee's counsel of record saying that a \$3,500.00 fine had to be paid. Ms. N. asked counsel what the deadline was for payment. The response was that it had to be paid that day. Ms. N. met Licensee's counsel of record at a bank that afternoon. She gave him a cashier's check for \$3,500.00. Counsel gave Ms. N., an envelope containing the Supplemental Order and a suspension placard. He advised that he intended to talk to the Administrative Law Judge who entered the original order and see if the Administrative Law Judge would issue an Order to the effect that Licensee would not have to serve any suspension. Ms. N. assumed his statement would be effective. He advised Ms. N. not to post the Suspension Placard. On the first day of suspension, September 15, 2008, Ms. N. attempted to call counsel of record but he was not available. At 4:00 p.m., Ms. N. decided to post the Suspension Placard. (N.T. 17-25)

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 February 1, 1995, and has had four prior violations (Commonwealth Exhibit No. C-3, N.T. 14):

Adjudication No. 00-1150. Fine \$125.00.
Sold alcoholic beverages on credit in contravention
of the provisions of the Liquor Code and Title 40
of the Pennsylvania Code.

Adjudication No. 04-1562. Fine \$1,250.00.
Sales to a minor.
January 16 and February 10, 2004.

Adjudication No. 06-2438. Fine \$3,500.00 and R.A.M.P.
Training mandated. Fine not paid and license suspended
7 days and thereafter until fine paid.

1. Sales on Sunday between 2:00 A.M. and 11:00 A.M.
September 10, 2006.
2. Sales to a visibly intoxicated person.
September 10, 2006.
3. Failed to require patrons to vacate the premises not
later than one-half hour after the required time.
September 10, 2006.
4. Permitted patrons to possess or remove alcoholic
beverages after 2:30 A.M.
September 10, 2006.

Adjudication No. 08-1107. Fine \$400.00.

Possessed or operated gambling devices or permitted
gambling on your licensed premises (football pool and
tickets).
February 3, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

This violation was caused by the failings of Licensee's former counsel. As Licensee is aware, counsel is an agent for Licensee and therefore Licensee assumes responsibility for counsel's negligence. I do however recognize the circumstances and consequently impose a \$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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 23RD day of April, 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. 08-2551
NEVE ENTERPRISES, INC.