

The citation¹ charges Licensee with a violation 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 on October 9, 2008, Licensee, by servants, agents or employes, sold alcoholic beverages after its Privately-Owned Public Golf Course Restaurant Liquor license expired on August 31, 2008, and had not been renewed and/or validated.

An evidentiary hearing was conducted on April 9, 2009 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 February 23, 2009 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 unclaimed.
2. On February 23, 2009, I issued a Pre-Hearing Order, by first class mail, directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing.
3. The Bureau began its investigation on September 30, 2008 and completed it on October 20, 2008. (N.T. 8)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on October 23, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)
5. Licensee's license expired on August 31, 2008. On October 9, 2008, a Bureau Enforcement Officer went to the licensed premises finding it was open and in operation selling alcoholic beverages although its license had yet to be renewed. (N.T. 10-14)
6. On September 4, 2008, Licensee was advised to cease selling alcoholic beverages yet continued to do so.

1. Commonwealth Exhibit No. C-2, N.T. 9.

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 May 20, 2005, and has had one prior violation (Commonwealth Exhibit No. C-3, N.T. 16):

Adjudication No. 08-2468. Fine \$1,250.00. Fine not paid and License suspended for one day and continuing thereafter until Fine paid.

Sales after your licensed expired and had not been renewed and/or validated.
September 4, 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.

As Licensee failed to appear and obey process, I impose a \$2,000.00 fine and a 3 days suspension.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,000.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED THAT the Privately-Owned Golf Course Liquor license (including all permits) No. PGR-AP-SS-EHF-246, issued to The Fairways Tavern & Grill, LLC, be suspended for a period of three days. However, the suspension period is deferred pending the renewal of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 30th 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. 08-2625
THE FAIRWAYS TAVERN & GRILL, LLC