

Mailing Date: JAN 11 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2680
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-378809
v.	:	
	:	LID - 42789
ALPHA BETA D CORPORATION	:	
T/A SKYLARK MOTOR INN	:	
225 MOON CLINTON ROAD	:	
CORAOPOLIS PA 15108-2429	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. H-AP-SS-4518	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily Gustave, Esquire
LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 12, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Alpha Beta D Corporation, t/a Skylark Motor Inn, License Number H-AP-SS-4518 (hereinafter Licensee).

The citation contains two counts.

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The first count charges Licensee with violation of Section 471(d) of the Liquor Code [47 P.S. §4-471(d)], in that from July 14 through October 15, 2008, Licensee failed to comply with the order of the Administrative Law Judge at Citation No. 08-0188C mandating responsible alcohol management training.

The second count charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)], in that Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding October 15, 2008.

An administrative hearing was conducted on December 1, 2009, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on August 1, 2008, and completed its investigation on October 15, 2008. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated October 28, 2008, which was sent by certified mail and received by Licensee on October 29, 2008. (Exhibit C-2)
3. The citation was issued on November 12, 2008, and was sent by certified mail and received by Licensee. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on October 16, 2009, by certified mail as well as first class mail.
5. The aforementioned certified mailing of the notice of hearing was signed for and received by Licensee on October 19, 2009.

COUNTS 1 AND 2

6. In an Order dated April 14, 2008 at Citation Number 08-0188C, Licensee was Ordered to complete R.A.M.P. training on or before July 18, 2008. (N.T. 10-11)

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7. On Wednesday, October 15, 2008 at 3:05 p.m., a Liquor Enforcement officer arrived at Licensee's premises and identified himself to bartender Lynne Aiello. An individual identified as Thomas Gentile informed the Enforcement officer that he was assisting Licensee's Corporate President Donald Woodhall who was ill. Mr. Gentile advised the Enforcement officer that he had all the keys to the offices and would provide all the necessary information. (N.T. 11-12)

8. As the result of this inspection, the Enforcement officer determined that Licensee did not maintain a R.A.M.P. Staff Roster and did not maintain any new Employee Orientation documentation. (N.T. 12)

9. The records of the Board reveal that Licensee has not received R.A.M.P. certification through the present. (N.T. 11-12)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. From July 14 through October 15, 2008, Licensee failed to comply with the order of the Administrative Law Judge at Citation No. 08-0188C mandating responsible alcohol management training, in violation of Section 471(d) of the Liquor Code.

3. Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding October 15, 2008, in violation of Section 493(12) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violations by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

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PRIOR RECORD:

Licensee has been licensed since September 2, 1998, and has had three prior violations, to wit:

Citation No. 05-2311. Fine \$1,000.00.

1. Illegal gambling (machines).
April 13, May 17, July 11 and 12, 2005.

Citation No. 06-0487. Fine \$100.00.

1. Operated the licensed establishment
without a valid health permit or license.
January 12, 2006.

Citation No. 08-0188C. Fine \$1,250.00 and
R.A.M.P. training mandated.

1. Sales to a minor.
January 5, 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.

Licensee's failure to submit a pre-hearing memorandum and its failure to attend the administrative hearing held in this matter demonstrates a clear lack of interest in this liquor license.

Official notice is taken that Licensee's restaurant liquor license is inactive and expired on May 31, 2009.

For the foregoing reasons, the following penalties shall be imposed:

Count one - \$400.00 and a suspension of Licensee's hotel liquor license for a period of one day and continuing thereafter until Licensee obtain R.A.M.P. certification; however the suspension period and R.A.M.P. training is deferred pending reactivation of Licensee's liquor license.

Count two - \$400.00.

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ORDER:

THEREFORE, it is hereby ordered that Alpha Beta D Corporation, t/a Skylark Motor Inn, License Number H-AP-SS-4518, pay a fine of \$800.00 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.

IT IS FURTHER ORDERED that License No. H-AP-SS-4518, be suspended for a period of one (1) day, and continuing thereafter until Licensee has obtained R.A.M.P. certification. However, the suspension period is deferred pending the reactivation of Licensee's license, at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Section 471.1 of the Liquor Code [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management; however the training is deferred pending the reactivation of Licensee's license, at which time the R.A.M.P. training will be fixed by further Order.

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 directing the R.A.M.P. training.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 23RD day of December, 2009.



Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

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Detach Here and Return Stub with Payment

The fine must be paid by cashier's check, certified check or money order. Personal and business checks are not acceptable unless bank certified. 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

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