

Mailing Date: JUN 03 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0021
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-377115
v.	:	
	:	LID – 46458
4301 LINGLESTOWN ROAD, INC.	:	
4301 LINGLESTOWN RD.	:	
HARRISBURG, PA 17112-9531	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-16418	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 15, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against 4301 Linglestown Road, Inc. (Licensee), License Number R-AP-SS-16418.

This citation¹ charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 7208(c) of the Tax Reform Code of 1971 [72 P.S. §7208(c)]. The charge is that on October 9, 2008, Licensee, by servants, agents or employees, engaged in taxable sales or service without a sales tax license.

An evidentiary hearing was conducted on May 5, 2009 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee did not appear personally or have any representation appearing on behalf of Licensee.

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 March 18, 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 signed for by Lisa Barowski. (N.T. 12)
2. On March 19, 2009, I issued a Pre-Hearing Order by first class mail directing Licensee to submit its pre-hearing memorandum to this Office. That Order reiterated the date, time and place of hearing. (N.T. 12-13)
3. The Bureau began its investigation on July 1, 2008 and completed it on December 21, 2008. (N.T. 62)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 5, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 09-0021, N.T. 65)
5. On the date charged, an Enforcement Collection Agent with the Department of Revenue went to the premises and noticed Licensee was engaging in sales and charging sales tax.
6. Licensee's license to engage in sales subject to Sales Tax and to collect the Sales Tax was revoked by the Department of Revenue on July 10, 2007. The license authorizes a business to charge sales tax on taxable items or services and remit the sales tax to the Commonwealth via the Department of Revenue. (N.T. 33-37)

1. Commonwealth Exhibit No. C-3, 09-0021, N.T. 65.

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 August 2, 2000, and has had five prior violations (Commonwealth Exhibit No. C-5):

Adjudication No. 00-2142. Fine \$1,000.00.
Sales to minors.
December 1, 2000.

Adjudication No. 01-0833. Fine \$100.00.
Issued worthless checks in payment for malt or brewed
beverages.
March 5, 2001.

Adjudication No. 01-1725. 1 day suspension.
Issued worthless checks in payment for malt or brewed
beverages.
May 4 and 8, 2001.

Adjudication No. 01-2308. Fine \$75.00 and 1 day suspension.
Issued worthless checks in payment for malt or brewed
beverages.
August 10, 17, September 21, 24 and 28, 2001.

Adjudication No. 03-1467. Fine \$10,000.00 and 45 days suspension.

1. Sales to minors.
September 25, 2002.
2. Sales between 2:00 A.M. and 7:00 A.M.
September 25, 2002.
3. Failed to require patrons to vacate the premises
not later than one-half hour after the required time.
September 25, 2002.
4. Permitted patrons to possess and/or remove
alcoholic beverages after 2:30 A.M.
September 25, 2002.
5. Engaged in the intimidation of witnesses or victims.
Between September 25 and December 23, 2002.
6. Permitted dancing to music until 5:00 A.M.
September 25, 2002.

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.

I impose a three days suspension. I impose the suspension because Licensee is in bankruptcy and further because any monetary penalty or revoking the license would jeopardize the Commonwealth's ability to recoup any tax funds Licensee has failed to remit. In the event Licensee operates the business again, I will re-open this matter for reevaluation of an appropriate penalty.

ORDER:

NOW THEREFORE, it is ordered that Restaurant liquor license (including all permits), No. R-AP-SS-16418, issued to 4301 Linglestown Road, Inc., be suspended for a period of three days. However, the suspension period is deferred pending renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED THAT IN THE EVENT Licensee operates the business again, I will re-open this matter for re-evaluation of an appropriate penalty.

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 28th 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.