

Mailing Date: OCT 01 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0193
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-385134
v.	:	
	:	LID - 54597
FAILTE STEAKHOUSE, LLC	:	
T/A FAILTE STEAKHOUSE	:	
1492 RT. 739	:	
DINGMANS FERRY, PA 18328-9786	:	
	:	
PIKE COUNTY	:	
LICENSE NO. R-AP-SS-20377	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Kim Byrne – Manager – Pro Se
Cionaod O’Cinneide – Member – Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 6, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Failte Steakhouse LLC, t/a Failte Steakhouse (Licensee), License Number R-AP-SS-20377.

The citation¹ charges Licensee with violations of Section 15.62(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §15.62(a)]. The charge is that on January 12 and 13, 2009, 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 August 27, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Manager, Ms. Byrne and its Member, Ms. O’Cinneide.

1. Commonwealth Exhibit No. C-2, N.T. 8.

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 November 25, 2008 and completed it on January 13, 2009. (N.T. 8)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 21, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)
3. Pursuant to Adjudication No. 07-1521, Licensee was suspended for one day, beginning at 7:00 a.m., Monday, January 12, 2009 and continuing thereafter until the fine was paid. (N.T. 10)
4. Pursuant to Adjudication No. 07-1845, Licensee was suspended for one day, beginning at 7:00 a.m., Tuesday, January 13, 2009 and continuing thereafter until the fine was paid.
5. On January 12, 2009, a Bureau Enforcement Officer conducted a suspension check at approximately 7:00 p.m. Licensee was closed and not operating. The Officer verified no Suspension Placard was posted on the premises. (N.T. 10-12)
6. The Officer returned to the premises on the following day, January 13, 2009 at 7:00 p.m. and again noted there was no Suspension Placard posted. (N.T. 20)

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 October 19, 2005, and has had four prior violations:

Adjudication No. 06-2732. Fine \$1,250.00 and RAMP training mandated.

Sales to a minor.
October 28, 2006.

Adjudication No. 07-1521. Fine \$200.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 20, 2007.

Adjudication No. 07-1845. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

Failed to notify the Board within 15 days of a change of manager.
October 29, 2005.

Adjudication No. 08-1506X. Fine \$150.00.

Issued worthless checks in payment for purchases of malt or brewed beverages.
April 30, 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.

As I find Licensee's witnesses to be credible that the Suspension Placard was in fact posted as required but, for some unknown reason, was clearly not posted at the times the Officer conducted a suspension check, I impose a \$200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$200.00 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 September, 2009.



Felix Thau, A.L.J.

pm

NOTICE: 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 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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FAILTE STEAKHOUSE LLC