

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. 09-0556
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-386408
v.	:	
	:	LID - 12597
BENNIE'S NEW DIAMOND CAFÉ INC	:	
FIVE MARKET PLACE	:	
PITTSBURGH PA 15222-1813	:	
	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-EHF-7191	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Nadia Vargo, Esquire
LICENSEE COUNSEL: No appearance.

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 16, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Bennie's New Diamond Café, Inc., License Number R-EHF-7191 (hereinafter Licensee).

The citation charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)], in that on February 5, 2009, Licensee, by its 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 administrative hearing was conducted on December 1, 2009, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia Vargo, 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 December 22, 2008, and completed its investigation on February 5, 2009. (Exhibit C-1)

2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated March 2, 2009, which was sent by certified mail and received by Licensee on March 3, 2009. (Exhibit C-2)

3. The citation was issued on March 16, 2009, and was sent to Licensee's premises by certified mail and returned unclaimed. The citation was also sent by certified mail to Licensee's President Ronald Gargani at 310 Vanadium Road, Pittsburgh, PA 15243, which was returned unclaimed. (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 and first class mail. The aforementioned certified mailing was returned unclaimed. The first class mailing was not returned.

5. On October 30, 2009, the notice of hearing was also mailed to Licensee's President Ronald Gargani at 310 Vandium Road, Pittsburgh, PA 15243.

6. In an Order dated December 18, 2008, at Citation Number 08-1528, a fine was imposed in the amount of \$2,000.00 and Licensee's restaurant liquor license was suspended for a period of four days commencing at 7:00 a.m. on Monday, February 2, 2009 and ending at 7:00 a.m. on Friday, February 6, 2009, and continuing thereafter until Licensee has obtained R.A.M.P. certification. (Official Notice, N.T. 14)

7. On Thursday, February 5, 2009 at 10:45 p.m., a Liquor Enforcement officer approached Licensee's premises and found it to be closed. An inspection of the outside of Licensee's premises revealed that there was no suspension placard posted visible from outside. (N.T. 11-16)

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. On February 5, 2009, Licensee, by its 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, in violation of Section 15.62(a) of the Liquor Control Board Regulations.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged 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).

PRIOR RECORD:

Licensee has been licensed since August 9, 1978, and has had five prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 94-2161. Fine \$500.00.

1. Sales to visibly intoxicated persons.

Citation No. 05-2000. Fine \$1,250.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Sales to minors.
August 18, 2005.

Citation No. 06-1201X. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages.
March 11, 2006.

Citation No. 07-0908. Fine \$1,300.00, two days suspension and R.A.M.P. training mandated.

1. Sales to a minor.
March 17, 2007.

Citation No. 08-1528. Fine \$2,000.00 and four days suspension with thereafter conditions. Fine not paid and license suspended one additional day and thereafter until fine paid. Fine not paid and license revoked.

1. Failed to comply with the order of the Administrative law Judge mandating R.A.M.P. training.
January 22 through May 22, 2008.
2. Sales to a minor.
March 15, 2008.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.
May 21, 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.

The record discloses that Licensee's restaurant liquor license was revoked effective May 31, 2009, as the result of Licensee's failure to pay a fine at Citation Number 08-1528.

ORDER:

THEREFORE, it is hereby ordered that Bennie's New Diamond Café, Inc., License Number R-EHF-7191 is REVOKED effective with the mailing date of this Order. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is CANCELLED.

Since the license is inactive, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

Jurisdiction is retained to ensure compliance with this Order.

BENNIE'S NEW DIAMOND CAFÉ, INC.
Citation Number 09-0556

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.