

Mailing Date: MAR 03 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0624
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-387651
v.	:	
	:	LID - 26395
INDIAN HEAD INN, INC.	:	
T/A WASHINGTON HOTEL	:	
1 E. MAIN ST.	:	
PO BOX 699	:	
ELIZABETHVILLE, PA 17023-0699	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. H-AP-SS-EHF-325	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL BALLARON
LICENSEE: MICHAEL GARNICK, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 19, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against INDIAN HEAD INN, INC., License Number H-AP-SS-EHF-325 (hereinafter "Licensee").

The citation contains four counts.

The first count charges Licensee with violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations [40 Pa. Code §5.41] in that on January 6 and 21, 2009, and divers occasions within the past year, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on January 31, 2007.

The second count charges Licensee with violation of Section 5.51(a) of the Liquor Control Board Regulations [40 Pa. Code §5.51(a)] in that from January 9 through 21, 2009, Licensee, by its servants, agents or employes, failed to clean coils, tap rods and connections at least once every seven days.

The third count charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] and Section 5.52 of the Liquor Control Board Regulations [40 Pa. Code §5.52] in that on January 28, 2009, Licensee, by its servants, agents or employes, failed to maintain coil cleaning records.

The fourth count charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] in that on January 21, 2009, and divers occasions within the past year, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises.

The investigation which gave rise to the citation began on January 6, 2009 and was completed on February 11, 2009; and notice of the violation was sent to Licensee by Certified Mail on March 11, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 18, 2009 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1, 2, 3 AND 4

1. Licensee's eating and drinking license expired on January 31, 2007, and was not renewed until April 2, 2009 (N.T. Exhibit C-3).
2. On January 6, 2009, an officer of the Bureau arrived at the licensed premises at 3:02 p.m. He entered the licensed premises in an undercover capacity. Upon entry he observed the corporate president, Mr. Garnick acting as bartender. There was also a male patron inside the licensed premises drinking beer at the time (N.T. 10).
3. The officer approached the bar where he ordered a six-pack of Miller Lite beer from Mr. Garnick. Mr. Garnick requested to see the officer's identification. After examining the officer's identification, Mr. Garnick retrieved a six-pack of beer from the cooler behind the bar. He charged the officer \$7.00 for the beer which the officer paid. The officer then departed the premises with the beer (N.T. 11).
4. On January 21, 2009 two officers of the Bureau along with individuals from the Pennsylvania Department of Agriculture arrived at the licensed premises (N.T. 11).

5. Upon entry, the officers observed Mr. Garnick acting in the capacity as bartender. There was a male patron seated at the bar consuming alcohol. The officers approached Mr. Garnick and identified themselves to him and informed him that they were there to conduct a routine inspection, and that the Department of Agriculture was with them and were going to conduct an inspection of their own (N.T. 12).

6. During the course of the inspection the officer checked the beer taps in use on the licensed premises for contamination or residue. He inserted napkins into the nozzles of the beer taps. Upon removal of the napkins from them, he found a black and moldy sludge-type substance on the napkins (N.T. 12-13).

7. Based upon the officer's experience, the officer concluded that the taps had not been cleaned recently (N.T. 13).

8. The officer asked Mr. Garnick if he had cleaned the taps, and if he had any tap-cleaning records. Mr. Garnick indicated that he had a personal situation happen recently, and since that had happened, a lot of the records for the premises he had not been able to locate. Mr. Garnick indicated that the last time he recalled cleaning the taps was prior to going on vacation on January 9, 2009 (N.T. 13-14).

9. Mr. Garnick indicated that he cleaned the taps himself utilizing his own tap-cleaning system (N.T. 14).

10. The officer had occasion to go into the kitchen where he observed equipment used to clean beer taps. He asked Mr. Garnick if this was the equipment that he used to clean the taps, and Mr. Garnick indicated that it was. The officer found that there were no hoses attached to the equipment which is normally used to pump solutions through the beer taps. The officer found that the top of the equipment was dirty and dusty and covered with filth. It gave the appearance that it hadn't been used in some time (N.T. 14).

11. The officer requested to see records related to the operation of the business. Mr. Garnick indicated that he was unable to locate these records. The officer then left a request for records specifically, the purchase records for the business for beer and liquor. The officer also requested to see the coil cleaning records and cash register tapes (N.T. 15).

12. Upon departure of the individuals from the Department of Agriculture, the licensed premises was ordered closed as a public health hazard. It was further indicated that the premises was not to reopen until certain deficiencies pointed out by the personnel from the Department of Agriculture were fixed (N.T. 15-16).

13. On January 28, 2009 the officer again arrived at the licensed premises. Mr. Garnick was able to produce the records that had been requested (N.T. 16).

14. Mr. Garnick provided the officer with tap cleaning records. However these records did not indicate the method that was used to clean the taps. It consisted basically of a notebook of handwritten notes and dates indicating when the taps were cleaned.

CONCLUSIONS OF LAW:

Counts 1, 2, 3 and 4 of the citation are **sustained**.

DISCUSSION:

COUNT 1

Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Regulations of the Liquor Control Board [40 Pa. Code §5.41] require that a valid health license be on the premises during any period when the licensed premises is in operation. In this case Licensee did not have a valid eating or drinking place license for the licensed premises on either January 6 or 21, 2009, since the eating and drinking place license for the licensed premises had expired in 2007 and was not renewed until April 2009. Count No. 1 of the citation is, therefore, sustained.

COUNTS 2, 3 AND 4

The record indicates that Licensee had failed to clean the beer coils, tap rods and connections at least once every seven days. The record indicates that the officer had checked the nozzles of the beer taps and found them to contain a black, moldy sludge-type substance. Upon asking Mr. Garnick, the president of Licensee corporation as to when the beer taps had been last cleaned, Mr. Garnick indicated he recalled cleaning the beer taps on January 9, 2009, some twelve days previous. It is clear, therefore, that Licensee had not complied with the law and had not cleaned the beer taps once in every seven days. Therefore, I conclude that Count No. 2 of the citation is **sustained**.

Section 5.52 of the Regulations of the Liquor Control Board [40 Pa. Code §5.52] requires that Licensee maintain and keep records for each date that taps are cleaned and the method used to clean them. These records are required to be maintained on file by the Licensee for inspection by the Board. Failure to do so is a violation of the aforementioned Section and also of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. In this case, while Licensee had a notebook indicating the dates the cleanings were done, there was no indication in these records as to what methods was used to clean them. Consequently, Licensee has violated the aforementioned Regulation and I conclude that Count No. 3 of the citation is sustained.

Section 493(12) (supra) requires Licensee to keep records concerning the operation on the licensed premises on the premises and available for a period of two years. In this case Licensee could not produce records involving the cleaning of the taps on January 6, 2009. Further on that date, Licensee did not have available records relating to the running of the licensed business, i.e. invoices for beer and liquor, etc. I therefore, conclude that Licensee having failed to have those records present was in violation of Section 4-493(12) of the Liquor Code (supra). Therefore, Count No. 4 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since November 14, 1990, and has had seven prior violations:

Citation No. 92-1207. Fine \$400.00.

1. Sales to a visibly intoxicated person.

Citation No. 94-1818. Fine \$60.00.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price.

Citation No. 96-2228. Fine \$700.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (machine, sports pool and sign up books).

Citation No. 97-2660. Fine \$150.00.

1. Purchased malt or brewed beverages on credit.

Citation No. 05-2225. Fine \$250.00.

1. Failed to clean coils at least once every 7 days. January 21 through September 10, 2005.
2. Not a bona fide hotel in that bedrooms maintained for the accommodations of guest are insufficient in number and/or inadequately equipped. September 2 and 23, 2005.

Citation No. 06-0063. 2 days suspension.

1. Not a bona fide hotel in that bedrooms were insufficient in number and/or inadequately equipped. November 21 through December 20, 2005.
2. Failed to maintain coil cleaning records. November 21 through December 20, 2005.

Citation No. 07-2440. Fine \$1,000.00.

1. Employee visibly intoxicated while on duty. June 29, 2007.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time. June 29, 2007.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. June 29, 2007.

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.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$1,000.00 fine
Count 2 - \$300.00 fine
Count 3 - \$150.00 fine
Count 4 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee INDIAN HEAD INN, INC., pay a fine of \$1,700.00 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.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 8TH day of February, 2010.



Daniel T. Flaherty, Jr., J.

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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 submit 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.** Make 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. 09-0624
Indian Head Inn, Inc.