

Mailing Date: NOV 13 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0681
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-385428
	:	
SMITH FAMILY INVESTMENTS LTD	:	
326 BROWNSVILLE RD	:	LID-57618
PITTSBURGH PA 15210-2249	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-8833	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Michael C. Nickles, Esq.

LICENSEE COUNSEL: Ex Parte

BACKGROUND:

This proceeding arises out of a citation that was issued on March 25, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Smith Family Investments, Ltd., License Number R-8833 (hereinafter Licensee).

Count one of the citation charge Licensee with violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)], in that on February 22, 2009, Licensee by its servants, agents, or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

Count two of the citation charge Licensee with violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)], in that on February 22, 2009, Licensee by its servants, agents, or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for service of alcoholic beverages after 2:30 a.m.

The investigation which gave rise to the citation began on December 4, 2008 and was completed on February 22, 2009. The notice of violation letter was mailed to Licensee on March 10, 2009.

An evidentiary hearing was held on this matter on October 20, 2009, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Allegheny County, Pennsylvania and holds Restaurant Liquor license number R-8833. (N.T. 4)
2. On Wednesday, January 21, 2009, an enforcement officer spoke with a local police lieutenant about the investigation. (N.T. 7)
3. On Sunday, February 22, 2009, at 2:10 a.m., a detail of enforcement officers and local police officers arrived at the licensed premises, conducted outside surveillance, and noted numerous individuals departing the establishment. (N.T. 8)
4. At 2:37 a.m., the detail of officers entered the licensed premises and found Licensee and a barmaid acting as bartenders. (N.T. 8-9)
5. The enforcement officers observed two patrons in possession of a malt beverage, draft beer and some type of liquor. (N.T. 8-9)
6. At 2:50 a.m., the officers departed the licensed premises. (N.T. 9)
7. An enforcement officer later confirmed that Licensee did not have an EHF permit on February 22, 2009. (N.T. 9)

CONCLUSION OF LAW:

Counts One & Two -- Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified as to his open inspection of the licensed premises on February 22, 2009.

Licensee did not appear at the hearing, although duly notified of the place and time.

I find the testimony of the officer to be credible. As such, the citation is sustained as charged.

SMITH FAMILY INVESTMENTS, LTD.

Citation No. 09-0681

PRIOR RECORD:

Licensee has been licensed since June 6, 2008, and has no prior violations.

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.

After due consideration of the circumstances giving rise to the citation and the Licensee's citation history, the following fine shall be imposed as the penalty in this case:

Counts One & Two (merged) -- \$450.00 fine.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Smith Family Investment, Ltd. pay a fine of \$450.00 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 UNTIL CASE IS CLOSED.

Dated this 5TH day of November, 2009.

Robert F. Swank

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.

SMITH FAMILY INVESTMENTS, LTD.

Citation No. 09-0681

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

Citation No. 09-0681

Smith Family Investments, Ltd.