

Mailing Date: SEP 29 2009

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation Nos. 09-0778
LIQUOR CONTROL ENFORCEMENT : 09-0839
 : (Consolidated as No. 09-0778)
 :
 v. :
 : Incident Nos. W01-390399
 : W01-390398
 :
 FINACARO-MAGLIO INC :
 T/A NOAH'S ARK :
 1548-50 MCKEAN STREET : LID - 16212
 PHILADELPHIA PA 19145 :
 :
 PHILADELPHIA COUNTY :
 LICENSE NO. R-AP-SS-13575 :

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Edward A. Taraskus, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued two citations, each of which alleges that Licensee violated §15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), by failing to post a Notice of Suspension. The details are as follows:

Citation No.	Date Citation Issued	Date of Alleged Violation
09-0778	April 7, 2009	March 10, 2009
09-0839	April 14, 2009	March 9, 2009

A hearing was held on August 4, 2009, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letters and the citations.

Licensee moved to consolidate the two citations for all purposes, because the alleged violation was by its nature a continuous one, occurring on successive days. It appears that the separate suspension orders were given to two different liquor control enforcement officers for compliance enforcement, and two investigations were opened. Licensee's motion is GRANTED.

FINDINGS OF FACT:

1. In separate supplemental orders concerning Citation Nos. 07-0751 and 07-1649, the Honorable Tania E. Wright ordered this license suspended for at least one day, beginning on March 9, 2009, (No. 07-0751) and March 10, 2009, (No. 07-1649) respectively. Each order directed Licensee to place a notice of suspension in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises.

2. On March 9, 2009, a liquor enforcement officer visited the licensed premises at 6:25 p.m. He found that it was closed, but there was no notice of suspension posted (N.T. 10-11).

3. On March 10, 2009, a liquor enforcement officer visited the licensed premises at 6:00 p.m. He found that it was closed, but there was no notice of suspension posted (N.T. 15-16).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Licensee presented contrary evidence, but I found the Bureau's evidence more credible.

PRIOR RECORD:

Licensee has been licensed since November 20, 1975, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 04-0848. \$500.00 fine.

1. Gambling (machine). April 7, 2004.
2. Operated without a valid health permit. February 25, March 20 and April 7, 2004.

Citation No. 05-2135. \$900.00 fine.

1. Sold liquor for consumption off premises. July 8 and August 13, 2005.
2. Loudspeakers could be heard outside. July 8 and August 5, 2005.
3. Not a *bona fide* restaurant (insufficient food). August 24, 2005.

Citation No. 06-0345. \$300.00 fine.

1. Sold liquor for consumption off premises. October 8, 2005.

Citation No. 07-0751. \$1,500.00 fine and R.A.M.P. – certification mandated. License suspended one day for late payment.

1. Sales to a minor. December 23, 2006.

Citation No. 07-1649. \$800.00 fine and verification of compliance. License suspended one day for late payment and late submission of verification.

1. Operated without a valid health permit. May 31 and June 15, 2007.
2. Not a *bona fide* restaurant (insufficient food, eating utensils and dishes).
June 15, 2007.

Citation No. 08-0317. \$1,250.00 fine and R.A.M.P. – certification training mandated.

1. Sales to a minor. December 15, 2007.

Citation No. 09-0262. \$350.00 fine.

1. Failed to comply with order mandating R.A.M.P. – certification.
December 15, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Citation Nos. 09-0778 and 09-0839 are hereby CONSOLIDATED for all purposes as No. 09-0778.

IT IS FURTHER ORDERED that Licensee, Finacaro-Maglio, Inc., t/a Noah's Ark, License No. R-AP-SS-13575, shall pay a fine of four hundred dollars (\$400.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 21ST day of September, 2009.



David L. Shenkle, J.

jb

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

Citation No. 09-0778
Finacaro-Maglio, Inc.