

Mailing Date: SEP 10 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0967
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-391840
v.	:	
	:	LID - 7588
KAY LOUISE ROSS	:	
T/A THE BEAR'S DEN	:	
MAIN ST.	:	
PO BOX 192	:	
MESHOPPEN, PA 18630	:	
	:	
WYOMING COUNTY	:	
LICENSE NO. H-AP-SS-5217	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 29, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Kay Louise Ross, t/a The Bear's Den (Licensee), License Number H-AP-SS-5217.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Section 15.62(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §15.62(a)]. The charge is that on March 31, 2009, Licensee, by servants, agents or employes, 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.

1. Commonwealth Exhibit No. C-3, 09-0967, N.T. 18.

The second count charges Licensee with a violation of Sections 491(1), 492(2), 492(3) and 493(16) of the Liquor Code [47 P.S. §4-491(1), §4-492(2), §4-492(3) and §4-493(16)]. The charge is that on March 31, 2009, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when her Hotel Liquor License was suspended at Citation No. 08-2248.

The third count charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)]. The charge is that on March 31, 2009, Licensee, by servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

An evidentiary hearing was conducted on July 30, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on June 12, 2009 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked unclaimed. (N.T. 4)
2. On June 12, 2009, I issued a Pre-Hearing Order, by first class mail, to Licensee at the licensed premises directing Licensee to submit her pre-hearing memorandum. That Order reiterated the date, time and place of hearing. (N.T. 4)
3. The Bureau began its investigation on March 31, 2009 and completed it on March 31, 2009. (N.T. 17)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 14, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-2, 09-0967, N.T. 17)

Count Nos. 1 and 2:

5. Pursuant to Adjudication No. 08-2248, Licensee was to be suspended beginning at 7:00 a.m., Monday, March 2, 2009, and continuing thereafter until Licensee submitted a Certification attesting the premises was a bona fide hotel.

6. A Bureau Enforcement Officer conducted a suspension check of the premises on March 31, 2009. The Officer arrived at 12:30 p.m. There was no Suspension Placard posted anywhere on the premises. The Officer also found the premises open and in operation selling alcoholic beverages even though the suspension was still in effect.

Count No. 3:

7. While present on March 31, 2009, the Officer saw ashtrays with cigarette butts in them. The Officer also smelled cigarette smoke. (N.T. 18-19)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since October 29, 1985, and has had four prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-1, N.T. 10):

Adjudication No. 90-1980. Fine \$300.00 and Sunday Sales Permit revoked.

1. Furnished false information regarding sales of food and beverages when applying for a Sunday Sales Permit.
2. Falsified records covering the operation of the licensed business.

Adjudication No. 93-1053. Fine \$500.00.
Sales to visibly intoxicated persons.

Adjudication No. 07-1243X. Fine \$150.00.
Issued worthless checks in payment for malt or
brewed beverages.
April 3, 2007.

Adjudication No. 08-2248. Fine \$250.00 and 1 day suspension
with thereafter conditions.
Not a bona fide hotel where the public may obtain
meals in that there was an insufficient supply of food.
August 14, 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 Count Nos. 1 and 3 and a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 2 in this case.

Inasmuch as Licensee has failed to appear or obey process, I impose:

Count Nos. 1 and 2 – merged - \$1,350.00 fine and 2 days suspension.
Count No. 3 - \$150.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,500.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Hotel liquor license (including all permits) of Kay Louise Ross, t/a The Bear's Den, License No. H-AP-SS-5217, be suspended for a period of two days, **BEGINNING** at 7:00 a.m., on Wednesday, October 28, 2009, and **ENDING** at 7:00 a.m., on Friday, October 30, 2009.

Licensee is directed, on Wednesday, October 28, 2009, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Friday, October 30, 2009, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 27TH day of August, 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 Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** 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, Pennsylvania 17110-9661

Citation No. 09-0967
KAY LOUISE ROSS