

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. 09-1130
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-391274
v.	:	
	:	LID - 24452
CHESS-HILL, INC.	:	
T/A FROGTOWN CAFE	:	
684 MARTICVILLE ROAD	:	
PEQUEA, PA 17565-9730	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-SS-18440	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL PATTERSON  
LICENSEE: NO APPEARANCE**

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 21, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CHESS-HILL, INC., License Number R-AP-SS-18440 (hereinafter "Licensee").

The citation charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)] in that on March 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12 and 13, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor license expired on February 28, 2009, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on March 23, 2009 and was completed on April 8, 2009; and notice of the violation was sent to Licensee by Certified Mail on May 7, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 22, 2009 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 684 Marticville Road, Pequea, PA 17565-9730 by certified mail, return receipt requested and by first class mail on August 5, 2009. The notice set forth the date and time of the hearing as September 22, 2009 at 3:00 p.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

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:

1. Licensee's restaurant liquor license expired on February 28, 2009, and, as of June 11, 2009 Licensee did not have authority to operate and dispense alcoholic beverages (N.T. 10 and Exhibit C-5).
2. On March 13, 2009 two officers of the Bureau arrived at the licensed premises at 9:25 p.m. They arrived at the licensed premises where they observed a female bartender rendering service to nine patrons (N.T. 7-8).
3. Upon entry the officers ordered two Miller Lite draft beers from the bartender. The bartender poured two Miller Lite drafts from taps behind the bar and served them to the officers. She informed one of the officers that the charge for the drinks was \$3.50. One of the officers provided her with payment. The bartender went over to the cash register, rang up the sale and returned the change to the officer (N.T. 8).
4. Licensee was open and operating and dispensing alcoholic beverages on March 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12 and 13, 2009 (N.T. 9).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since March 28, 1989, and has had eight prior violations:

Citation No. 94-2127. Fine \$250.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (numbers bets).

Citation No. 97-2198. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 99-2056. Fine \$50.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 00-1356. 1 day suspension.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 06-1611. Fine \$1,250.00.

1. Sold alcoholic beverages after the restaurant liquor license expired and had not been renewed and/or validated. April 22, May 21 and 26, 2006.

Citation No. 07-1240. Fine \$1,500.00.

1. Sales after the restaurant liquor license expired on February 28, 2007 and had not been renewed and/or validated. March 1 through March 4, 2007 and March 6, 2007.

Citation No. 07-1777X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 30, 2007.

Citation No. 08-3017X. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 18, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case. Further, Section 471(c) requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

Under the circumstances of this case, the penalty imposed shall be fine of \$1,750.00 and a one day suspension.

ORDER

THEREFORE, it is hereby ordered that Licensee CHESS-HILL, INC., pay a fine of \$1,750.00 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.

IT IS FURTHER ORDERED that Licensee's liquor license (including all permits) License No. R-AP-SS-18440 be suspended for a period of one day. However, the suspension period is deferred pending reactivation of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the dates for suspension.

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

Dated this 30<sup>TH</sup> day of October, 2009.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", is written above a horizontal line.

Daniel T. Flaherty, Jr., J.

an

**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. 09-1130  
Chess-Hill, Inc.