

Mailing Date: OCT 08 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1545
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-392864
v.	:	
	:	LID - 6284
HOTEL IOLA, INC.	:	
T/A HOTEL IOLA	:	
2950 SR 42	:	
MILLVILLE, PA 17846	:	
	:	
	:	
COLUMBIA COUNTY	:	
LICENSE NO. R-AP-SS-1415	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 2, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against HOTEL IOLA, INC., License Number H-AP-SS-1415 (hereinafter "Licensee").

The citation contains two counts.

The first count 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 June 1, 2009, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when its Hotel Liquor license was suspended at Citation No. 08-1155.

The second count charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] in that on June 1, 2009, Licensee, by its servants, agents or employees, 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.

The investigation which gave rise to the citation began on April 15, 2009 and was completed on June 1, 2009; and notice of the violation was sent to Licensee by Certified Mail on June 18, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 21, 2010 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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, 2950 SR 42, Millville, PA 17846-0390 by certified mail, return receipt requested and by first class mail on May 21, 2010. The notice set forth the date and time of the hearing as July 21, 2010 at 11:00 a.m., and the place of hearing as PA Dept of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

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 AND 2

1. On May 22, 2009 this office mailed a Second Supplemental Order at Citation No. 08-1155. The Order suspended Licensee's hotel liquor license for a period of one day beginning at 7:00 a.m. on Monday, June 1, 2009 and ending at 7:00 a.m. on Tuesday, June 2, 2009 (N.T. Exhibit C-5).
2. On June 1, 2009 at 10:55 p.m., an officer of the Bureau arrived at the licensed premises (N.T. 8).
3. Upon entering the licensed premises the officer did not find a suspension placard at any of the windows that were visible (N.T. 8).
4. As the officer entered he observed a female bartender rendering service to three patrons (N.T. 8).
5. The officer sat down at the bar and requested a bottle of Rolling Rock beer which the bartender served to him. She took money from the officer and placed it into the cash register (N.T. 8).
6. Approximately five to ten minutes later the officer ordered a shot of Jagermeister liquor. The officer was served a drink by the bartender who took his money and placed it in the register and gave him his change (N.T. 8-9).
7. The officer departed the licensed premises at 11:20 p.m. with the same three patrons remaining (N.T. 9).

8. During the time he was on the licensed premises, the officer observed the other patrons consuming alcoholic beverages (N.T. 9).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since April 28, 1987, and has had one prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 08-1155. Fine \$250.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises. April 28, 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 Count No. 1 of this case.

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 No. 2 of this case.

Counts 1 and 2 of the citation are combined for the purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be suspension of license for a period of two days.

ORDER

IT IS HEREBY ORDERED that the restaurant liquor license (including all permits) of HOTEL IOLA, INC., License No. R-AP-SS-1415 be suspended for a period of two days. 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 22ND day of September, 2010.

A handwritten signature in black ink, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

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.