

Mailing Date: JAN 22 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1682
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-395647
	:	
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 July 17, 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.

The citation charges Licensee with a violation of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that on June 24, 2009, Licensee's licensed premises was not a bona fide hotel where the public may, for a consideration, obtain sleeping accommodations and obtain meals in that there was an insufficient supply of food.

An evidentiary hearing was conducted on December 11, 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.

1. Commonwealth Exhibit No. C-2, N.T. 7.

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 October 23, 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. 4-5)
2. On October 27, 2009, I issued, by first-class mail, a Pre-Hearing Order which directed Licensee to submit a pre-hearing memorandum to this Office and to Bureau counsel. That Order reiterated the date, time and place of hearing. (N.T. 4-5)
3. The Bureau began its investigation on June 10, 2009 and completed it on June 24, 2009. (N.T. 6)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on June 30, 2009. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)
5. A Bureau Enforcement Officer was assigned to conduct a compliance check. The Officer entered the premises on June 24, 2009, at 6:10 p.m., at a time when the premises was open for business. After identifying himself, the Officer was permitted to conduct an inspection of the premises. The Officer found in the refrigerator a frozen pizza and frozen meat. The rest of the refrigerator was filled with beer. The remainder of the kitchen equipment was without power. The stove and cooking appliances were not working. There was no running water. Licensee had no food sale records or invoices other than for purchases of potato chips and other snack items. (N.T. 8-13)
6. I take official notice that Licensee is required to have twelve bedrooms. Two of the twelve rooms were used for storage.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since October 29, 1985, and has had six prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-3):

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.

Adjudication No. 09-0674. Fine \$1,000.00 and a 2 days suspension. Fine not paid and an additional 1 day suspension and continuing thereafter until fine paid was imposed.
Failed to post in a conspicuous place on the outside of the licensed premises a Notice of Suspension.
March 3 and 4, 2009.

Adjudication No. 09-0967. Fine \$1,500.00 and 2 days suspension. Fine not paid and an additional two days suspension and continuing thereafter until fine paid was imposed.

1. Failed to post in a conspicuous place on the outside of the licensed premises a Notice of Suspension.
2. Sales during a time when your license was suspended.
March 31, 2009.
3. Permitted smoking in a public place where smoking was prohibited.
March 31, 2009.

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.

As Licensee has failed to appear or obey process, I will impose a \$1,000.00 fine and a three days suspension. As the license is inactive, I assume the Pennsylvania Liquor Control Board will not renew the license without an inspection to ensure compliance as a bona fide hotel.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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 three days. However, the suspension period is deferred pending renewal of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that since Licensee's liquor license is inactive, I assume the Pennsylvania Liquor Control Board will not renew the license without an inspection to ensure compliance as a bona fide hotel. Therefore, there is no need to suspend Licensee with thereafter conditions.

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

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 8TH day of January, 2010.



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 Cashier's Check, Certified Check or Money Order. **Personal and business checks, are not acceptable unless bank certified.** Please make 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. 09-1682
KAY LOUISE ROSS