

Mailing Date: SEP 09 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1754
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-395645
v.	:	
	:	LID - 41562
BILL'S HILLTOP, INC.	:	
T/A BILL'S HILLTOP	:	
715 JACKSON AVE.	:	
SUSQUEHANNA (DEPOT)	:	
SUSQUEHANNA, PA 18847-1533	:	
	:	
SUSQUEHANNA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-4941	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: WILLIAM PERRY, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 27, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against BILL'S HILLTOP, INC., License Number R-AP-SS-EHF-4941 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with 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)] in that on June 17, 2009, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The second count charges Licensee with violation of Section 491(10) of the Liquor Code [47 P.S. §4-491(10)] in that on June 17, 2009, Licensee, by its servants, agents or employes, refilled liquor bottles.

The investigation which gave rise to the citation began on June 10, 2009 and was completed on June 17, 2009; and notice of the violation was sent to Licensee by Certified Mail on July 7, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 2, 2010 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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 June 17, 2009, an officer of the Bureau entered the licensed premises at approximately 3:15 p.m. (N.T. 10). Upon entry, the officer observed several patrons on the licensed premises (N.T. 10).

2. The officer observed eight patrons inside the licensed establishment who were actually smoking. There were also several ashtrays placed throughout the licensed premises (N.T. 11).

3. The officer ascertained through the Department of Health that Licensee was not approved to be a smoking establishment (N.T. 11).

4. During the inspection of the licensed premises the officer went to the kitchen area where he observed nine various 1.7 liter bottles of liquor where the contents of them were at different levels. They were all open on the table in the kitchen as well as the bar area. The officer also found matching bottles of 750 ml size behind the actual bar that matched the bigger bottles in the kitchen area (N.T. 12).

5. The officer observed the smaller bottles behind the bar had labels that were stained which is consistent with the refilling these bottles when liquor is poured down the side (N.T. 12).

6. The officer also found a funnel next to the bottles in the kitchen (N.T. 14).

7. The officer questioned Licensee's principal, Mr. Perry, concerning the large bottles in the kitchen matching the bottles on the bar. Mr. Perry initially said the larger bottles were used on busy nights. However, after further questioning he admitted that he was refilling the smaller bottles on the bar with the large bottles from the kitchen (N.T. 13).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since January 6, 1998, and has had four prior violations:

Citation No. 00-1970. Fine \$300.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pool).

Citation No. 06-1251C. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a minor. April 17, 2006.

Citation No. 08-0561X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 20 and December 28, 2007.

Citation No. 08-1198. Fine \$600.00.

1. The licensed corporation was not the only one pecuniarily interested in the operation of the licensed business. July 1, 2007 through March 17, 2008.
2. Operated the licensed establishment without a valid health permit or license. April 2, 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 this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$150.00 fine
Count 2 - \$150.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee BILL'S HILLTOP, INC., pay a fine of \$300.00 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.

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

Dated this 31ST day of August, 2010.



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.

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. 09-1754
Bill's Hilltop, Inc.