

Mailing Date: OCT 25 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2240
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-399870
v.	:	
	:	LID - 28712
TWO HEARTS, INC.	:	
T/A LILY LAKE HOTEL	:	
RD 1, BOX 101-A	:	
WAPWALLOPEN, PA 18660-9801	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. H-AP-SS-2467	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: TARA STOLARIK, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 28, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against TWO HEARTS, INC., License Number H-AP-SS-2467 (hereinafter "Licensee").

The citation charges Licensee with 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)] in that on September 2, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Hotel Liquor license expired on August 31, 2009, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on September 2, 2009 and was completed on September 8, 2009; and notice of the violation was sent to Licensee by Certified Mail on September 8, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 3, 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:

1. As of September 2, 2009, Licensee did not have a validated liquor license or temporary authority to dispense alcoholic beverages (N.T. Exhibit C-3). On September 2, 2009, at 5:10 p.m. an officer of the Bureau went to the licensed premises.

2. The officer approached the front door, and a male individual was at the front door putting up a sign which said, "Wednesdays Wing Night was cancelled due to electrical problems in the kitchen." (N.T. 15).

3. The officer asked the individual if the bar was open and whether he could get a six pack. The gentleman said, "Yeah I can help you." (N.T. 15). The officer and the gentleman entered the licensed premises at 5:12 p.m. where the officer purchased a six pack of 12 ounce cans of Coors Light beer for \$6.50. The money was collected and rung up and deposited in the cash register (N.T. 15).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since December 12, 1991, and has had five prior violations:

Citation No. 96-0065. Fine \$450.00.

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.

Citation No. 02-0487. Fine \$200.00.

1. Operated the licensed establishment without a valid health permit.

Citation No. 03-1570. Fine \$1,000.00 and 1 day suspension.

1. Sales to a minor. May 11, 2003.

Citation No. 07-1532. Fine \$1,500.00 and RAMP training mandated.

1. Sales to a minor. April 28 and 29, 2007.

Citation No. 08-0796. Fine \$500.00 and 1 day suspension with thereafter conditions. Licensee's request for reconsideration modified penalty to 2 days suspension.

1. Failed to comply with the Order of the Administrative Law Judge mandating RAMP training. February 7 through March 20, 2008.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years. March 19, 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.

The record reflects that the wife of the owner of the stock in Licensee corporation had requested the individual at the bar to put a sign up indicating that the bar was closed. This individual was not aware that Licensee was not authorized to dispense alcoholic beverages. Licensee was not authorized to dispense alcoholic beverages because a tax clearance from the Department Revenue was improperly withheld. Under these circumstances, I am inclined to impose the minimum penalty allowed.

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

ORDER

IT IS HEREBY ORDERED that the hotel liquor license (including all permits) of TWO HEARTS, INC., License No. H-AP-S-2467 be suspended for a period of one day **BEGINNING** at 7:00 a.m. on Monday, December 6, 2010 and **ENDING** at 7:00 a.m. on Tuesday, December 7, 2010.

Licensee is directed on December 6, 2010 at 7:00 a.m. to place the enclosed 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 December 7, 2010 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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

Dated this 27TH day of September, 2010.

A handwritten signature in cursive script, 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.