

Mailing Date: MAR 18 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2328
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-398090
v.	:	
	:	LID - 51997
DORFF ASSOCIATES, LLC	:	
680 RAILROAD ST.	:	
JERSEY SHORE, PA 17740-1156	:	
	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. R-AP-SS-19311	:	

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

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 8, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against DORFF ASSOCIATES, LLC, License Number R-AP-SS-19311 (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 Sections 7215, 7216 and 7318 of the Tax Reform Code of 1971 [72 P.S. §§7215, 7216 and 7318] in that Licensee, Dorff Associates, LLC violated the Tax Reform Code of 1971, in that it failed and/or refused to file, in a timely manner, employer tax returns with the Commonwealth of Pennsylvania, Department of Revenue, for the first and second quarters of 2009.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 7208(c) of the Tax Reform Code of 1971 [72 P.S. §7208(c)] in that on August 26, 2009, Licensee, by its servants, agents or employes, engaged in taxable sales or service without a sales tax license.

The investigation which gave rise to the citation began on July 28, 2009 and was completed on September 20, 2009; and notice of the violation was sent to Licensee by Certified Mail on September 24, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 19, 2011 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, 680 Railroad Street, Jersey Shore, PA 17740-1156 by certified mail on December 2, 2010. The notice set forth the date and time of the hearing as January 19, 2011 at 1:00 p.m., and the place of hearing as PA Department 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:

COUNT 1

1. Employers in the Commonwealth of Pennsylvania were required to file State Employee Withholding Tax returns for the first quarter of the year 2009 on or before April 30, 2009 (N.T. 10).
2. Licensee failed to file an Employee Withholding Tax return for the first quarter of 2009 with the Pennsylvania Department of Revenue until August 28, 2009 (N.T. 13 and Exhibit C-5).
3. Employers within the Commonwealth of Pennsylvania were required to file Employee Withholding Tax returns with the Pennsylvania Department of Revenue for the second quarter of 2009 on or before July 31, 2009 (N.T. 14).
4. Licensee failed to file an Employee Withholding Tax return for the second quarter of 2009 with the Pennsylvania Department of Revenue until August 27, 2009 (N.T. 14 and Exhibit C-5).

COUNT 2

5. Licensee's sales tax license with the Commonwealth of Pennsylvania was in a revoked status as of August 26, 2009.

6. On August 26, 2009 an officer of the Bureau entered the licensed premises at 3:15 p.m. (N.T. 19-20).

7. Upon entry the officer observed the principal of Licensee, Kelly Oberdorff tending bar. There were approximately seven or eight patrons present (N.T. 20).

8. The officer purchased an order of French fries. The menu price was stated as \$3.25 (N.T. 20). The officer paid \$3.45 for the purchase which included sales tax (N.T. 20).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since October 22, 2003, and has had seven prior violations:

Citation No. 06-1344. Fine \$350.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
January 1, 2006.

Citation No. 06-1577. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a visibly intoxicated person. May 26, 2006.

Citation No. 07-0592. Fine \$250.00.

1. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.  
December 6, 2006.

Citation No. 07-1347. Fine \$150.00 and 1 day suspension with thereafter conditions.

1. Failed to comply with the order of the Administrative Law Judge mandating RAMP training. March 21 through April 26, 2007.

Citation No. 08-0366C. Fine \$1,250.00.

1. Sales to a minor. January 24, 2008.

Citation No. 08-2031. Fine \$1,500.00 and 1 day suspension.

1. Sales to a visibly intoxicated person. July 19, 2008.

Citation No. 09-0779. Fine \$1,000.00.

1. Violated the Tax Reform Code of 1971, in that you failed and/or refused to remit sales tax due and owing. June, July, August, September, October, November and December 2008.
2. Violated the Tax Reform Code of 1971, in that you failed and/or refused to file sales tax returns. December 2008 and January 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.

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

Count 1 - \$500.00 fine  
Count 2 - \$500.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee DORFF ASSOCIATES, LLC, 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.

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

Dated this 3<sup>RD</sup> day of March, 2011.



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**

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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. 09-2328  
Dorff Associates, LLC