

Mailing Date: OCT 18 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2650
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-399460
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 November 24, 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 Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on September 13 and October 8, 2009, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on September 13, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated female patron.

The investigation which gave rise to the citation began on August 25, 2009 and was completed on October 19, 2009; and notice of the violation was sent to Licensee by Certified Mail on October 30, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 12, 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 June 29, 2010. The notice set forth the date and time of the hearing as August 12, 2010 at 9:30 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 September 13, 2009 an officer of the Bureau arrived at the licensed premises at 12:45 a.m. Tending bar and rendering service to 30 patrons was a female bartender (N.T. 7).
2. As the officer walked in the front door, he took a seat at the bar. Immediately as he sat down, two females approached him, one to his left and one to his right. The one on the left sat at the bar, the one on the right remained standing (N.T. 7).
3. The female on the right introduced herself as Tanya. She indicated she was an off duty bartender who worked for the Licensee. The female that sat to the left had a strong odor of alcohol coming from her person. She was very disheveled in appearance (N.T. 7-8).
4. Both of the individuals started questioning the officer as to who he was and whether or not he was an "undercover cop" or with the "LCB." (N.T. 8).
5. In the beginning of the conversation, the female to the officer's left interrupted and asked if we were "cool." This referred to whether or not the officer was an undercover policeman. She asked this several times to which the officer replied, "Yeah, we're cool." (N.T. 8).
6. The female to the officer's left had a slur to her speech. Her words were slow and mumbled (N.T. 8).

7. The woman to the officer's left ordered three shots of peppermint schnapps, one for the officer, one for Tanya and one for herself. The bartender poured the shots, took money from the woman to the officer's left and put it in the cash register and gave the shots to the three individuals (N.T. 9).

8. The officer observed that entertainment for the evening was being provided by a DJ known as DJ Frank. He was playing music that was being amplified through loudspeakers (N.T. 10).

9. The officer left the bar at 1:20 a.m. and conducted an auditory surveillance. He was able to hear music emanating from the licensed premises at distances up to 300 feet away (N.T. 10-11).

10. On October 8, 2009, the officer, along with another officer of the Bureau went to the licensed premises. Upon arrival they heard music coming from within (N.T. 12-13).

11. Upon entry, the officer observed the female bartender named Tanya providing service to customers (N.T. 13).

12. The officer observed that the same DJ that was playing on the previous visit was providing music for the entertainment of patrons. The music was amplified through loudspeakers (N.T. 13).

13. At approximately 11:10 p.m. the officers exited the licensed premises and could hear music emanating from the licensed premises at distances up to 300 feet (N.T. 13).

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 two 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.

Citation No. 09-1545. Two days suspension.

1. Sales during a time when the license was suspended. June 1, 2009.
2. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. June 1, 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 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 2 of this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

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

- Count 1 – one day suspension
- Count 2 – three days suspension and mandatory RAMP training

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 four 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.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the liquor Code [47 P.S. §4-471(d)].

IT IS FURTHER ORDERED that since Licensee's license is inactive so much of this Adjudication as it relates to mandatory compliance with Liquor Code Section 471.1 pertaining to Responsible Alcohol Management is suspended pending license reactivation.

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

Dated this 29TH 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.