

Mailing Date: JUN 17 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2663
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-402326
v.	:	
	:	LID - 45999
LAPKO'S BAR AND GRILL INC	:	
340 EAST EIGHTH AVENUE	:	
HOMESTEAD PA 15120-1561	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-10471	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily Gustave, Esquire
LICENSEE COUNSEL: Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 16, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Lapko's Bar and Grill, Inc., License Number R-10471 (hereinafter Licensee).

The citation charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)], in that on October 25, 2009, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m.

An administrative hearing was conducted on May 26, 2010, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee's President Ronald Lapko appeared on behalf of Licensee corporation.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on October 19, 2009, and completed its investigation on October 26, 2009. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated October 30, 2009, which was sent by certified mail and received by Licensee on November 2, 2009. (Exhibit C-1)
3. The citation was issued on November 16, 2009, and was sent by certified mail and received by Licensee on November 18, 2009. (Exhibit C-2)
4. On Sunday, October 25, 2009, at 3:00 p.m., a Liquor Enforcement officer entered Licensee's premises in an undercover capacity and observed a female bartender rendering service of alcoholic beverages to approximately 15 patrons. (N.T. 14-15)
5. Upon entering, the Enforcement officer took a seat at the bar and purchased a 16-ounce bottle of Coors Light beer for \$2.75 from bartender "Kimmie," which transaction was recorded on the cash register. (N.T. 15)
6. During the course of this visit, the Enforcement officer observed the other patrons in possession of and consuming bottled beer and mixed drinks. (N.T. 15)
7. The Enforcement officer departed Licensee's premises at approximately 4:00 p.m. (N.T. 15)
8. On Sunday, October 25, 2009, Licensee did not possess a Sunday Sales Permit issued by the Board. (Exhibit C-3) (N.T. 15)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On October 25, 2009, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code.

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DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violation as charged in this citation. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PRIOR RECORD:

Licensee has been licensed since June 2, 2000, and has had one prior violation, to wit:

Citation No. 02-0943. Fine \$300.00.

1. Permitted patrons to enter the premises between 2:30 a.m. and 7:00 a.m. when Licensee did not possess and extended hours food permit.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.

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.

In mitigation, the record discloses that this citation represents Licensee's first violation of the type herein enumerated.

For the foregoing reasons, Licensee's restaurant liquor license shall be suspended for a period of two days.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of Lapko's Bar and Grill, Inc., License No. R-10471 be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, August 16, 2010 and **ENDING** at 7:00 a.m. on Wednesday, August 18, 2010.

LAPKO'S BAR AND GRILL, INC.

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Licensee is directed on Monday, August 16, 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 Wednesday, August 18, 2010 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 14TH day of JUNE, 2010.



Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.