

Mailing Date: MAR 16 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0156
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-393917
v.	:	
	:	LID - 39269
DELAWARE COUNTY LAGOON INC	:	
TAYLOR AVE & DELAWARE RIVER	:	
ESSINGTON PA 19029-1230	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. H-AP-SS-EHF-88	:	

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 2, 2010. The citation alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on September 11 and November 7, 2009, by operating the licensed premises without a valid health permit or license, which expired on July 31, 2009.

A hearing was held on Tuesday, February 7, 2012, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. A liquor enforcement officer inspected the licensed premises on November 7, 2009. He found the premises to be in compliance with the law “except we were unable to locate a health license. However, we were able to locate a health license. However, it expired as July, 2009.” (*sic*) (N.T. 6).

2. The officer spoke with Licensee’s president. The officer testified: “I believe he didn’t realize that it had expired as well. He thought he had made a payment. However, he wasn’t exactly sure.” (N.T. 7).

3. The officer also visited the premises on September 11, 2009. On that date, as well as on November 2, 2009, there were sales of alcoholic beverages in the premises (N.T. 7-8).

4. The township manager of Tinicum Township, Delaware County, met with the liquor enforcement officer who visited the premises on some date, and the officer asked him to validate whether Licensee had a valid health permit. He testified that "As I recall, there was a gap between when their old permit expired and when they had their new permit to the best of my recollection." When asked what date health permits expire in the township he testified, "I don't know the answer off the top of my head. I believe depending on establish --- they are for a year's length. So one establishment may not have the same time period as another." (N.T. 11-12).

5. The manager was asked if he reviewed the records of the township health department, and he said that he did, but he did not remember the date of the expiration of the health permit, nor did he remember the date of the new health permit going into effect (N.T. 12-13).

#### CONCLUSIONS OF LAW:

The evidence presented was insufficient to prove that Licensee violated the law.

#### DISCUSSION:

There may have been a breakdown in the administrative process in this case, because the citation was filed on February 2, 2010, and the first notice of a hearing was not mailed until November 16, 2011, about one year and nine months later. It may be that this delay contributed to the strange vagueness of the testimony in this case.

The liquor enforcement officer's self-contradiction ("...we were unable to locate a health license. However, we were able to locate a health license.") without clarification, together with the township manager's inability to corroborate the officer's testimony (despite having reviewed the township's records), cause me to doubt the sufficiency of the evidence in this case.

The Bureau alleged in the citation that Licensee's health permit expired on July 31, 2009, and therefore they assumed the burden to prove that date by competent evidence. The testimony presented did not do this.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 10-0156 is DISMISSED.

Dated this 9<sup>TH</sup> day of MARCH, 2012.



David L. Shenle, J.

jb

**NOTICE: 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.**

**WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.**

**THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.**