

Mailing Date: MAR 01 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0367
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-402031
v.	:	
	:	LID - 56097
RISING SUN MOTEL CORP. DAKOTA	:	
STEAKHOUSE JOINT VENTURE	:	
T/A DAKOTA STEAKHOUSE &	:	
SALOON	:	
1095 WAYNE AVE.	:	
CHAMBERSBURG, PA 17201-2975	:	
	:	
FRANKLIN COUNTY	:	
LICENSE NO. H-AP-SS-6045	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
LICENSEE: DENISE E. ALLEN, PRO SE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on March 11, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against RISING SUN MOTEL CORP. DAKOTA STEAKHOUSE JOINT VENTURE, License Number H-AP-SS-6045 (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 10, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The investigation which gave rise to the citation began on October 9, 2009 and was completed on January 31, 2010; and notice of the violation was sent to Licensee by Certified Mail on February 26, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 5, 2011 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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. On October 10, 2009, an officer of the Bureau conducted an undercover visit to the licensed premises. She arrived at 10:00 p.m. (N.T. 11).
2. As the officer was walking to the premises, she observed people standing outside on the patio area. There was a bar counter out on this patio (N.T. 11).
3. The officer stopped prior to entering and paid a \$10.00 cover charge and was given an armband to allow her inside (N.T. 11).
4. On her way into the premises, the officer observed corporate principal, Peri Panagos dancing through the crowd inside the licensed premises. He had several patrons following. People were stopping him and wishing him Happy Birthday (N.T. 11-12).
5. Upon reaching the inside, the officer estimated there were 175-200 people present (N.T. 12).
6. At about 1:55 a.m., the officer went outside and was standing at the outdoor bar counter (N.T. 12).
7. The officer heard the female bartender at the outdoor bar counter tell people to hurry up. She would not serve anybody after 2:00 a.m. (N.T. 12-13).
8. At 2:00 a.m. the female bartender at the outside bar counter stopped serving people. She picked up her cell phone, flipped it open. She looked at her cell phone and then put it down. She then looked at the officer and said, "I'm done." (N.T. 13).
9. At 2:10 a.m., Mr. Panagos came outside. He had two men with him. They were laughing and talking (N.T. 14).
10. The female bartender at the outside bar counter was in the process of cleaning up. She was wiping off bottles and putting things away. Mr. Panagos called the female bartender to him and whispered something in her ear. The officer could not hear what he said. However, he observed the female bartender shake her head in a negative response (N.T. 14).

11. Mr. Panagos called her back over again and whispered something else in her ear. She made a “funny face,” turned around and picked up a bottle from a shelf where the liquor was stored. She took a shot glass, poured a shot into it and gave it to one of the men with Mr. Panagos (N.T. 14-15).

12. The bottle had a pourer in it and came from a shelf where liquor was stored (N.T. 15).

13. The female bartender handed the full shot glass to the man, and he went back inside with Mr. Panagos and the other man (N.T. 15).

14. The officer followed Mr. Panagos and the two men back inside and saw Mr. Panagos take a seat at the bar counter inside (N.T. 15).

15. At 2:20 a.m. a male patron approached Mr. Panagos and whispered something in his ear. Mr. Panagos got up from his seat, went over to free-standing coolers where he removed a bottle of Heineken beer from the cooler. He tried to conceal the bottle behind his leg so that no one could see. He then handed the bottle off to the male patron that whispered into his ear. The male patron took the beer, placed it in his coat pocket and left the premises (N.T. 16).

CONCLUSION OF LAW:

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

DISCUSSION:

The record establishes that a female bartender and Licensee’s principal, Mr. Panagos, provided alcoholic beverages to patrons after 2:00 a.m. Consequently, the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since March 14, 2006, and has had four prior violations:

Citation No. Citation No. 06-2922. Fine \$400.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time. August 25, 2006.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. August 25, 2006.

Citation No. 08-2199. Fine \$3,250.00 and RAMP training mandated.

1. Used loudspeakers or devices whereby music could be heard outside. May 17 and June 1, 2008.
2. Sales to visibly intoxicated persons. June 1, 2008.
3. Corporate manager was visibly intoxicated on the licensed premises. June 1, 2008.

Citation No. 09-0569. Fine \$2,000.00.

1. Operated the licensed establishment without a valid health permit or license. January 1 through 20, 2009.
2. Engaged in unlawful discrimination in that you admitted female patrons for an admission fee of \$20.00 while charging an admission fee of \$30.00 to male patrons. October 11, 2008.
3. Sold and/or served an unlimited or indefinite amount of alcoholic beverages. October 11, 2008.
4. Failed to label beer taps properly. January 16, 2009.
5. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of the licensed business for a period of two years. January 30, 2009.

Citation No. 09-2585. Fine \$3,750.00.

1. Used loudspeakers or devices whereby music could be heard outside. May 9, 2009.
2. Sales to a visibly intoxicated person. May 9, 2009.
3. Permitted smoking in a public place where smoking was prohibited. April 4 and May 9, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case. Further, Section 471(c) requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

Under the circumstances of this case, the penalty imposed shall be a fine of \$2,000.00 and a two days suspension.

ORDER

THEREFORE, it is hereby ordered that Licensee RISING SUN MOTEL CORP DAKOTA STEAKHOUSE JOINT VENTURE, pay a fine of \$2,000.00 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.

IT IS FURTHER ORDERED that Licensee's liquor license (including all permits) License No. H-AP-SS-6045 be suspended for a period of two days **BEGINNING** at 7:00 a.m. on Monday, March 28, 2011 and **ENDING** at 7:00 a.m. on Wednesday, March 30, 2011.

Licensee is directed on March 28, 2011 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 March 30, 2011 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 11<sup>TH</sup> day of February, 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. 10-0367  
Rising Sun Motel Corp  
Dakota Steakhouse Joint Venture