

Mailing Date: FEB 25 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0464
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-405702
v.	:	
	:	LID - 23339
STEVEN R. JOHNSON	:	
T/A JOHNSON'S HOTEL	:	
201-203 W. MAIN ST.	:	
ANNVILLE, PA 17003-1326	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. H-AP-1724	:	

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

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on March 18, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against STEVEN R. JOHNSON, License Number H-AP-1724 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Sections 491(1) 492(2), 492(3) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2), 4-493(3) and 4-493(26)] in that on February 8, 2010, Licensee, by his servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when his Hotel Liquor license was suspended at Citation No. 09-1719.

The second count charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] in that on February 8, 2010, Licensee, by his servants, agents or employes, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

The third count charges Licensee with violation of Section 15.62(c) of the Liquor Control Board Regulations [40 Pa. Code §15.62(c)] in that on February 8, 2010, Licensee, by his servants, agents or employes, failed to remove his license from display as directed by the Office of Administrative Law Judge at Citation No. 09-1719.

The investigation which gave rise to the citation began on December 23, 2009 and was completed on February 9, 2010; and notice of the violation was sent to Licensee by Certified Mail on March 5, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 14, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at his address of record, 201-203 W. Main Street, Annville, PA 17003-1326 by certified mail, return receipt requested and by first class mail on October 28, 2010. The notice set forth the date and time of the hearing as December 14, 2010 at 1:00 p.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

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, 2 AND 3

1. Administrative notice is hereby taken that the Office of Administrative Law Judge issued an Order at Citation No. 09-1719 on December 21, 2009 suspending Licensee's hotel liquor license for a period of two days beginning at 7:00 a.m. on Monday, February 8, 2010 and ending at 7:00 a.m. on Wednesday, February 10, 2010 (N.T. 8-9).

2. On February 8, 2010, an officer of the Bureau arrived in the area of the licensed premises at around 8:00 a.m. He observed no lights and no persons or activity at the licensed premises at that time (N.T. 9).

3. At 8:00 a.m., on February 8, 2010, the officer observed no suspension placard was visible anywhere on the licensed premises which notified the public that the licensed premises was under suspension (N.T. 9-10).

4. The officer returned to the licensed premises at 3:45 p.m. on February 8, 2010. At that time, he observed that interior lights, window lights, and beer lights were lit. He again observed no notice of suspension placard was posted or visible on the exterior of the licensed premises (N.T. 10).

5. The officer entered the licensed premises through the rear doorway at 3:49 p.m. on February 8, 2010. Upon reaching the bar room area, he immediately observed Licensee, Steven R. Johnson behind the serving side of the bar counter. There were three male patrons present seated at the bar counter. All three were in possession of either draft beer or bottled or canned beer. There was also currency laying on the bar counter (N.T. 10).

6. The officer took a seat at the bar counter at 3:50 p.m. He ordered and received a 10-ounce small draft of Coors Light beer from Licensee, Mr. Johnson. He gave Johnson \$2.00 for the purchase. Mr. Johnson rang the sale on the cash register and returned \$.50 in change to the officer (N.T. 11).

7. At 3:56 p.m. the officer departed the licensed premises, got equipment from his state vehicle and immediately reentered the bar (N.T. 11).

8. Upon reentry the officer found the same three patrons present at the bar. Mr. Johnson was still behind the bar counter. The officer immediately identified himself to Mr. Johnson and questioned him as to whether or not he realized he was ordered by the Office of Administrative Law Judge to be under suspension that day and the next for a two day total (N.T. 11).

9. Mr. Johnson was confused at that point. He retrieved three money orders showing that he had paid fines on a prior citation. He thought everything had been taken care of by payment of the fines. The officer pointed out to him his error and the fact that he was currently under suspension (N.T. 11).

10. Mr. Johnson was very cooperative. At the direction of the officer he immediately took his current liquor license off the wall. The officer also informed him that he needed a suspension placard. He did have a suspension placard on hand, which he immediately retrieved and placed on the front doorway of the licensed premises (N.T. 11-12).

11. The three male patrons who were present departed leaving the premises empty except for the Licensee and the officer (N.T. 12).

12. The officer asked Licensee if he could see a recap of the cash register for sales that day. Licensee produced a cash register tape which showed that he had sold \$4.50 in draft beer, \$4.50 in bottled beer and \$24.75 in takeout beer sales and \$28.25 in shots of liquor all sold on that date (N.T. 12).

13. The officer departed the premises and returned on Tuesday, February 9, 2010 at 3:45 p.m. On arrival the officer found the notice of suspension placard properly posted and the licensed premises was closed (N.T. 13).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since June 20, 1989, and has had ten prior violations:

Citation No. 00-1688. Fine \$1,000.00.

1. Sales to a minor.

Citation No. 03-1954. Fine \$1,500.00.

1. Sales to minors. October 25, 2003.

Citation No. 08-2921X. Fine \$150.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. October 24, 2008.

Citation No. 09-0018X. Fine \$175.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 6, 2008.

Citation No. 09-0297X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 4 and 18, 2008.

Citation No. 09-1461. Fine \$750.00.

1. Sales to minors. May 7, 2009.

Citation No. 09-1492X. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 30, 2009.

Citation No. 09-1719. 2 days suspension.

1. Sales during a time when the license was suspended. June 15, 2009.
2. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. June 15, 2009.

3. Failed to remove the license from display as ordered by the OALJ. June 15, 2009.

Citation No. 09-2004X. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages. July 3, 2009.

Citation No. 09-2163X. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages. July 24 and 31, 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 Count 1 of 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.

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 Counts 2 and 3 of this case.

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

- Count 1 – 4 days suspension
- Count 2 – 1 day suspension
- Count 3 – 1 day suspension

ORDER

THEREFORE, IT IS HEREBY ORDERED that the hotel liquor license of STEVEN R. JOHNSON, License No. H-AP-1724 be suspended for a period of six 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.

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

Dated this 11<sup>TH</sup> day of February, 2011.

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.**