

Mailing Date: OCT 05 2010

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

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| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 10-0625 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W04-408571 |
| v. | : | |
| | : | LID - 57689 |
| CHRISTOPHER J STREIFF | : | |
| T/A CJ'S HIGHWAY INN | : | |
| 3108 RTE 8 | : | |
| ALLISON PARK PA 15101-3838 | : | |
| | : | |
| | : | |
| ALLEGHENY COUNTY | : | |
| LICENSE NO. R-AP-SS-18220 | : | |

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily Gustave, Esquire
LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 2, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Christopher J. Streiff, t/a CJ's Highway Inn, License Number R-AP-SS-18220 (hereinafter Licensee).

The citation contains two counts.

The first count charges Licensee with violation of Section 471(d) of the Liquor Code [47 P.S. §4-471(d)], in that from February 5 through March 4, 2010, Licensee failed to comply with the order of the Administrative Law Judge at Citation No. 09-1274C mandating responsible alcohol management training.

The second count charges Licensee with violation of Section 474.1(a) of the Liquor Code [47 P.S. §4-474.1(a)], and Section 7.31(a) of the Liquor Control Board Regulations [40 Pa. Code §7.31(a)], in that Licensee, by his servants, agents or employees, failed to return his Restaurant Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after his licensed establishment had not been in operation for a period of 15 consecutive days subsequent to December 20, 2009.

An administrative hearing was conducted on August 24, 2010, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee did not appear personally or through legal counsel.

At the administrative hearing, this court granted the Bureau's motion to amend Count two of this citation as follows: Licensee, by his servants, agents or employees, failed to return his Restaurant Liquor License and wholesale Liquor Purchase Permit Cards to the Board after his licensed establishment had not been in operation for a period of 15 consecutive days subsequent to December 5, 2009. (N.T. 11-12)

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 February 26, 2010, and completed its investigation on March 5, 2010. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated March 19, 2010, which was sent by certified mail and returned unclaimed. (Exhibit C-2)
3. The citation was issued on April 2, 2010, and was sent by certified mail and received by Licensee on April 8, 2010. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on July 7, 2010, by First Class mail and Certified mail.
5. The aforementioned certified return receipt card was signed by Christopher J. Streiff on July 20, 2010.

COUNTS 1 AND 2

6. In an Adjudication and Order dated April 28, 2010, at Citation Number 09-1274C, Administrative Law Judge Skwaryk imposed a fine in the amount of \$1,250.00 and ordered that Licensee complete R.A.M.P. certification on or before February 4, 2010. (N.T. 9, 13)

7. On March 4, 2010, a Liquor Enforcement officer spoke telephonically with Licensee Christopher J. Streiff and was advised that Licensee was not R.A.M.P. certified and did not pay the fine of \$1,250.00 imposed in the Order at Citation No. 09-1274C due to the fact that he was in the process of transferring his liquor license. (N.T. 9)

8. During the course of this March 4, 2010 phone conversation, Mr. Streiff further advised the Enforcement officer that his licensed premises has been closed for business since December 5, 2009, following a vehicular accident which damaged the licensed premises. Licensee has not returned his Restaurant Liquor License and Wholesale Liquor Purchase Permit cards to the Board within 15 days following the termination of business which occurred on December 5, 2009. (N.T. 9-10, Exhibit C-5)

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. From February 5 through March 4, 2010, Licensee failed to comply with the order of the Administrative Law Judge at Citation No. 09-1274C mandating responsible alcohol management training, in violation of Section 471(d) of the Liquor Code.
3. Licensee, by his servants, agents or employees, failed to return his Restaurant Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after his licensed establishment had not been in operation for a period of 15 consecutive days subsequent to December 5, 2009, in violation of Section 474.1(a) of the Liquor Code, and Section 7.31(a) of the Liquor Control Board Regulations.

DISCUSSION:

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

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PRIOR RECORD:

Licensee has been licensed since May 2, 2007, and has had one prior violation, to wit:

Citation No. 09-1274C. Fine \$1,250.00 and R.A.M.P. training mandated. Fine not paid and license revoked effective May 24, 2010.

1. Sales to a minor.
May 5, 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 types found in this case.

The record reveals that in a Second Supplemental Order at Citation No. 09-1274C dated April 28, 2010, Licensee's restaurant liquor license was revoked effective May 24, 2010, for failure to pay the fine.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. R-AP-SS-18220, issued to Christopher J. Streiff, t/a CJ's Highway Inn, be **REVOKED** effective at 7:00 a.m. on Monday, November 15, 2010. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is out of existence, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

Jurisdiction is retained to ensure compliance with this order.

Dated this 15TH day of September, 2010.



Roderick Frisk, J.

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CHRISTOPHER J. STREIFF

Citation Number 10-0625

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.