

Mailing Date:

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 10-0902
BUREAU OF LIQUOR CONTROL :
ENFORCEMENT :

v. :

HEISTER STREET, INC. : License No. R-19803
t/a Deli/Saloon/Inferno :
101-113 Heister Street and : LID 20539
340-342 East College Avenue :
P.O. Box 81 :
State College, PA 16804 :

Counsel for Licensee: Evan C. Pappas, Esquire (on appeal)
Shumaker Williams, P.C.
P.O. Box 88
Harrisburg, PA 17108

Counsel for Bureau: Nadia L. Vargo, Assistant Counsel
Pennsylvania State Police,
Bureau of Liquor Control Enforcement
313 Mount Nebo Road
Pittsburgh, PA 15237-1305

SUPPLEMENTAL OPINION

Citation No. 10-0902 was initially issued on April 30, 2010 and charged Heister Street, Inc. t/a Deli/Saloon/Inferno (“Licensee”) with violating section 493(1) of the Liquor Code [47 P.S. § 4-493(1)] in that on

February 27, 2010, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages to one (1) visibly intoxicated male patron.

On May 17, 2010, Licensee submitted an Admission, Waiver and Authorization (“Waiver”) to the Office of the Administrative Law Judge (“OALJ”), in which Licensee admitted to the violation charged in the citation and waived its right to appeal the adjudication. The Waiver was signed by Andrew A. Zangrilli, Licensee’s president, on May 12, 2010, who acted *pro se*.

On May 24, 2010, the citation was amended to increase the number of visibly intoxicated patrons from one (1) to two (2).

On June 17, 2010, an Adjudication and Order were issued by the ALJ, sustaining the citation and imposing a fine of three thousand dollars (\$3,000.00) and a suspension of ten (10) days. The Adjudication and Order were then amended on June 24, 2010 by a Supplemental Opinion and Order which indicated that the number of suspension days were incorrectly stated in the initial Order due to administrative error. The penalty imposed was thereby amended to a fine of three thousand dollars

(\$3,000.00) and a suspension of seven (7) days. The Adjudication and Order, as amended, were based on the May 12, 2010 Waiver.

On July 26, 2010, Evan C. Pappas, Esquire, filed a timely appeal to the ALJ's Supplemental Opinion and Order, on behalf of Licensee.

By mailing date of August 4, 2010, the Board affirmed Licensee's appeal, vacated the decision of the ALJ, and remanded the case to the ALJ for a hearing since the record did not reflect that Licensee's May 12, 2010 waiver covered the amended citation issued May 24, 2010.

On August 9, 2010, the Bureau and Licensee filed a Joint Motion to Vacate the Board's Opinion of August 4, 2010. Licensee now wishes to withdraw its appeal and application for supersedeas and accept the penalty as imposed by the ALJ.

The parties aver in their joint motion to vacate that, in essence, Licensee agreed orally to the amended citation and desired that its waiver to the original citation be extended to the amended citation as well.

Given the joint motion, the Board will vacate its Order of August 4, 2010 and reinstate the ALJ's Supplemental Opinion and Order of June 24, 2010.

ORDER

The Joint Motion to Vacate filed August 9, 2010, is granted.

Licensee's appeal and applications for supersedeas are dismissed.

Licensee has paid the fine of three thousand dollars (\$3,000.00).

Restaurant Liquor License (including all permits) of Heister Street, Inc., t/a Deli/Saloon/Inferno, License No. R-AP-SS-EHF-19803, shall be suspended for a period of ten (10) days, beginning at 7:00 a.m., on Friday, August 13, 2010, and ending at 7:00 a.m., on Monday, August 23, 2010.

Licensee is directed, on Friday, August 13, 2010, at 7:00 a.m., to place a 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 Monday, August 23, 2010, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

Further, Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee must remain in compliance for a period of one (1) year from the mailing date of this Adjudication.

Licensee shall comply with all other conditions as set forth in the ALJ's Supplemental Order mailed June 24, 2010.

Board Secretary