

Mailing Date: MAR 04 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1085
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-411179
	:	
DGA MARCO'S INC	:	
3019 JACKS RUN RD	:	LID-43559
WHITE OAK PA 15131-2523	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-8486	:	
	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Michael C. Nickles, Esq.
LICENSEE COUNSEL: David K. Trautman, Esq.

BACKGROUND:

This proceeding arises out of a citation that was issued on May 28, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against DGA Marco's, Inc., License Number R-8486 (hereinafter Licensee).

The citation charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations, [40 Pa. Code, §15.62(a)], in that on May 3, 2010, Licensee, by its servants, agents, or employees, 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 investigation which gave rise to the citation began on April 12, 2010 and was completed on May 3, 2010. The notice of violation letter was mailed to Licensee on May 11, 2010.

An evidentiary hearing was held on this matter on January 27, 2011, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Allegheny County, Pennsylvania and holds Restaurant Liquor license number R-8486. (N.T. 4).
2. The Supplemental Order under Citation No. 06-2013 imposed a one day suspension of Licensee's liquor license to begin on Monday, May 3, 2010, at 7:00 a.m. and to end on Tuesday, May 4, 2010 at 7:00 a.m. (N.T. 8).
3. On Monday, May 3, 2010, between 10:00 a.m., and 10:20 a.m., an enforcement officer visited the licensed premises and observed that it was closed for business but did not find a Notice of Suspension placard posted. (N.T. 8-9).
4. At approximately 11:00 a.m., Licensee's landlord placed the placard in the window. (N.T. 22-24).
5. At 5:50 p.m., the enforcement officer returned to the licensed premises and found that a suspension placard had been posted by the main door, and observed individuals inside performing cleaning duties. (N.T. 9, 11).

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d (Pa. Cmwlth. 1982). The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black's Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

At the hearing held on the matter, the enforcement officer, Licensee's corporate president, and landlord testified. The officer conducted a suspension check of the licensed premises at 10:00 a.m. and found no suspension placard as required under the Supplemental Order in Case No. 06-3013. He returned at 5:50 p.m., and found the placard posted.

Licensee's president testified that he was away and telephoned his landlord to post the placard. The landlord testified that he posted the placard in the morning, but after 9:30 a.m.

I find the testimony of all of the witness to be credible. Because Licensee is strictly liable for this violation, the citation is sustained as charged.

DGA MARCO'S, INC.
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PRIOR RECORD:

Licensee has been licensed since February 8, 1999, and has three (3) prior violations, to wit:

Citation No. 01-0879. Fine \$500.00.

1. The licensed corporation was not the only one pecuniarily interested in the operation of the licensed business.

Citation No. 06-2013. Fine \$100.00 and 1 day suspension.

1. Sunday sales after 2:00 a.m.
July 30, 2006.
2. Permitted entertainment without an amusement permit.
August 6, 2006.

Citation No. 07-1520. Fine \$150.00. Fine not paid and license suspended 1 day and thereafter until fine paid. Fine still not paid and license revoked. Licensee's appeal to Board dismissed. Licensee's appeal to Common Pleas Court pending.

1. Operated the licensed establishment without a valid health permit or license.
April 3 and May 1, 2007.

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 a violation of the type found in this case.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$200.00 will be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ORDERED that DGA Marco's, Inc., pay a fine of \$200.00 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.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 16TH day of February, 2011.



Robert F. Skwaryk, J.

DGA MARCO'S, INC.
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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.

Detach Here and Return Stub with Payment

The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Please make your 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

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