

Mailing Date: JAN 03 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1289
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-411181
v.	:	
	:	LID - 42789
ALPHA BETA D CORPORATION	:	
T/A SKYLARK MOTOR INN	:	
225 MOON CLINTON ROAD	:	
CORAOPOLIS PA 15108-2429	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. H-AP-SS-4518	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Emily Gustave, Esquire  
**LICENSEE COUNSEL:** Thomas Gentile,  
Board-approved Manager, Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on June 28, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Alpha Beta D Corporation, t/a Skylark Motor Inn, License Number H-AP-SS-4518 (hereinafter Licensee).

The citation contains two counts.

The first 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 May 24, 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 second count charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)], in that on May 24, 2010, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when its Hotel Liquor license was suspended at Citation No. 08-2680.

An administrative hearing was conducted on December 7, 2010, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee's Manager Thomas Gentile appeared on behalf of Licensee.

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 April 12, 2010, and completed its investigation on May 27, 2010. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated June 7, 2010, which was sent by certified mail and received by Licensee on June 8, 2010. (Exhibit C-2)
3. The citation was issued on June 28, 2010, and was sent by certified mail and received by Licensee. (Exhibits C-3, C-4)

COUNTS 1 AND 2

4. In a Supplemental Order dated April 2, 2010, at Citation Number 08-2680, this court ordered that Licensee's hotel liquor license be suspended for a period of one day commencing at 7:00 a.m. on Monday, May 24, 2010, and ending at 7:00 a.m. on Tuesday, May 25, 2010, and continuing thereafter until Licensee obtained R.A.M.P. certification. (N.T. 11-12)

5. On Monday, May 24, 2010, at 2:45 p.m., a Liquor Enforcement officer entered Licensee's premises in an undercover capacity and observed a female bartender rendering service of alcoholic beverages to approximately 13 patrons. The Enforcement officer noted that the patrons were in possession of either bottled beer or alcoholic mixed drinks. (N.T. 12)

6. Upon taking a seat at the bar, the Enforcement officer requested a bottle of Miller Lite beer from the female bartender. The Enforcement officer was served a 12-ounce bottle of Miller Lite beer at which time he tendered a five dollar bill. This transaction was recorded on the cash register and the Enforcement officer was provided with \$2.50 in change. (N.T. 12-13)

7. The Enforcement officer departed Licensee's premises at approximately 2:52 p.m. with the patronage unchanged. (N.T. 13)

8. During the course of this visit, the Enforcement officer noted that there was no suspension placard posted anywhere on or about the premises. (N.T. 13)

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. On May 24, 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, in violation of Section 15.62(a) of the Liquor Control Board Regulations.

3. On May 24, 2010, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when its Hotel Liquor license was suspended at Citation No. 08-2680, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violations as charged in 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).

Moreover, Licensee's Board-approved Manager Thomas Gentile was unable to provide any documentation that Licensee has ever received R.A.M.P. certification. This court notes that Licensee has remained open and operating continuously during all periods when its license was active since Monday, May 24, 2010, in defiance of the April 2, 2010 Supplemental Order issued at Citation Number 08-2680. (N.T. 30-31, 39-41)

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Licensee argues that the Board reactivated its license on July 20, 2010, without reference to the ongoing suspension and Licensee presumed that its R.A.M.P. certification had been satisfied. Nevertheless, this court does not accept that argument as Licensee cannot substantiate any such R.A.M.P. certification. Moreover, the Bureau's lack of enforcement of the April 2, 2010 Supplemental Order may have reduced the visibility of this ongoing suspension to the Board.

However, regardless of any lack of enforcement of the suspension imposed in the aforementioned Supplemental Order, Licensee is fully responsible to comply with the clear and unambiguous instructions set forth in that order and remain suspended until it acquires R.A.M.P. certification.

PRIOR RECORD:

Licensee has been licensed since September 2, 1998, and has had five prior violations, to wit:

Citation No. 05-2311. Fine \$1,000.00.

1. Illegal gambling (machines).  
April 13, May 17, July 11 and 12, 2005.
2. Not a bona fide hotel in that food was not provided upon request.  
January 9, February 7, 23, April 13,  
May 17 and July 11, 2005.

Citation No. 06-0487. Fine \$100.00.

1. Operated the licensed establishment without a valid health permit or license.  
January 12, 2006.

Citation No. 08-0188C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.  
January 5, 2008.

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Citation No. 08-2680. Fine \$800.00 and one day suspension with thereafter conditions.

1. Failed to comply with the order of the Administrative Law Judge mandating R.A.M.P. training.  
July 14 through October 15, 2008.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.  
October 15, 2008.

Citation No. 09-3030. Fine \$1,800.00.

1. Sales after its license expired and had not been renewed and/or validated.  
November 17, 2009.

PENALTY:

With respect to Count one, 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 this case. As to Count two, Section 471 of the Liquor Code 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 a violation of this type.

As to Count two, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

Licensee's failure to comply with the Supplemental Order at Citation Number 08-2680 dated April 2, 2010, is reprehensible and warrants a significant penalty.

For the foregoing reasons, the following penalties shall be imposed:

Count one - \$500.00 and a suspension of Licensee's hotel liquor license for a period of five (5) days.

Count two - \$2,500.00 and a suspension of Licensee's hotel liquor license for a period of ten (10) days.

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Licensee is reminded that its suspension imposed in the Supplemental Order at Citation Number 08-2680 is ongoing until Licensee provides documentation to this court that it is R.A.M.P. certified. A copy of the certification is to be returned to the Office of Administrative Law Judge, Pennsylvania Liquor Control Board, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania 17110-9661. A copy of the certification is to be sent to Emily Gustave, Assistant Counsel, Bureau of Liquor Control Enforcement, Pennsylvania State Police, 313 Mt. Nebo Road, Pittsburgh, Pennsylvania 15237. In light of this ongoing suspension, the suspension imposed in the present order shall be deferred until a Second Supplemental Order at Citation Number 08-2680 has been issued ending the suspension that commenced on May 24, 2010.

ORDER:

THEREFORE, it is hereby ordered that Alpha Beta D Corporation, t/a Skylark Motor Inn, License Number H-AP-SS-4518, pay a fine of \$3,000.00 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 License No. H-AP-SS-4518 be suspended for a period of fifteen (15) days; however the suspension is deferred until a Second Supplemental Order at Citation Number 08-2680 has been issued ending the suspension that commenced on May 24, 2010.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 21<sup>ST</sup> day of DECEMBER, 2010.



Roderick Frisk, J.

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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.

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Detach Here and Return 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. 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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Alpha Beta D Corporation