

Mailing Date: MAR 15 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1351
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-410988
v.	:	
	:	LID - 49479
FRATERNAL ORDER OF EAGLES	:	
JERSEY SHORE AERIE NO. 1747, INC.	:	
312-316 ALLEGHENY ST.	:	
JERSEY SHORE, PA 17740-1406	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. C-2120	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 9, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against FRATERNAL ORDER OF EAGLES JERSEY SHORE AERIE NO. 1747, INC., License Number C-2120 (hereinafter "Licensee").

The citation 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 its servants, agents or employes, failed to return its Club Liquor license and Wholesale Liquor Purchase Permit Cards to the Board after the licensed establishment had not been in operation for a period of fifteen consecutive days between January 13 and May 14, 2010.

The investigation which gave rise to the citation began on April 4, 2010 and was completed on June 1, 2010; and notice of the violation was sent to Licensee by Certified Mail on June 16, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 19, 2011 in the PA Department of Agriculture, 2130 County Farms Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Christine Hickman, PO Box 900, Avis, PA 17721, by certified mail on December 2, 2010. The notice set forth the date and time of the hearing as January 19, 2011 at 11:00 a.m., and the place of hearing as PA Department of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

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:

1. As a result of a previous investigation, the Bureau of Enforcement determined that the parent organization for Licensee club had pulled its charter, and Licensee club was no longer functioning (N.T. 9).

2. On April 14, 2010 an officer of the Bureau went to the licensed premises. He found that the premises appeared deserted. The building looked uninhabited and had not been kept up nor was any maintenance taking place (N.T. 9-10).

3. Through investigation, the officer was able to determine the contact person for Licensee club was Christine Hickman who was listed in the records of the Liquor Control Board as the Board approved manager/steward (N.T. Exhibit C-8).

4. The officer was able to contact Christine Hickman and determine that Licensee club was last operational in the later part of 2009 and that Licensee's charter had been relocated to an Aerie of the Fraternal Order of Eagles in Lock Haven (N.T. 12).

5. On April 28, 2010, the officer informed Ms. Hickman that the liquor license for Licensee club should be placed in safekeeping right away (N.T. 13).

6. The officer checked with the Liquor Control Board on May 4, 2010 and found that the Liquor Control Board still listed the license as active and not in safekeeping as of that date (N.T. 13-14).

7. On May 4, 2010 the officer called Ms. Hickman who told the officer she was waiting for the retail liquor card, and as soon as she got that card she was going to turn both the liquor license and the retail liquor card into the Liquor Control Board (N.T. 14).

8. The officer again checked with the Liquor Control Board on May 17, 2010 and found out that the license was still not in safekeeping (N.T. 14).

9. On June 1, 2010 the officer again checked with the Liquor Control Board and found that the license had been placed in safekeeping (N.T. 14-15).

10. Licensee's club liquor license was not placed in safekeeping during the period from January 13, 2010 through May 14, 2010 (N.T. Exhibit C-8).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since September 12, 2002, and has had two prior violations:

Citation No. 03-0115. Fine \$150.00.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 08-2532. Fine \$1,400.00.

1. Sales after the license expired and had not been renewed and/or validated. September 20, 2008.
2. Issued worthless checks in payment for malt or brewed beverages. September 3, 2008.

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 this case.

Investigation by the Bureau of Enforcement indicates that the Licensee club has lost its charter and is no longer operating. Under these circumstances there seems little reason for the existence of the club license in this case.

Under the circumstances of this case, the penalty imposed shall be license revocation.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Club Liquor License No. C-2120, issued to FRATERNAL ORDER OF EAGLES JERSEY SHORE AERIE NO. 1747, INC., be **REVOKED** effective at 7:00 a.m. on Monday, April 4, 2011. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

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

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

Dated this 28TH day of February, 2011.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", is 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.