

Mailing Date: FEB 09 2011

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1882
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-410581
	:	
v.	:	LID - 28712
	:	
TWO HEARTS, INC.	:	
T/A LILY LAKE HOTEL	:	
RD1 BOX 101-A	:	
WAPWALLOPEN, PA 18660-9801	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. H-AP-SS-2467	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 8, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Two Hearts, Inc., t/a Lily Lake Hotel (Licensee), License Number H-AP-SS-2467.

This citation¹ contains seven counts.

The first count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)]. The charge is that on April 4, 17, May 1, 19 and 25, 2010, Licensee, by servants, agents or employees, permitted smoking in a public place where smoking was prohibited.

1. Commonwealth Exhibit No. C-10. (N.T. 41)

The second count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(1) of the Clean Indoor Air Act [35 P.S. §637.6(a)(1)]. The charge is that on April 4, 17, May 1, 19 and 25, 2010, Licensee, by servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act.

The third count charges Licensee with violations of Section 474.1(a) of the Liquor Code [47 P.S. §4-474.1(a)] and Section 7.31(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §7.31(a)]. The charge is that Licensee, by servants, agents or employes, failed to return its Hotel Liquor license and Wholesale Liquor Purchase Permit Cards to the Board after its licensed establishment had not been in operation for a period of fifteen (15) consecutive days between July 7 and 21, 2010.

The fourth count charges Licensee with violations of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by servants, agents or employes, issued checks or drafts dated May 20, 21, 22, 29, June 8, 9 and 15, 2010, in payment for purchases of malt or brewed beverages, when Licensee had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The fifth count charges Licensee with violations of Section 473 of the Liquor Code [47 P.S. §4-473]. The charge is that Licensee, by servants, agents or employes, refused and/or failed to provide the Board with information regarding the involvement of Kevin Kocher in the operation of its licensed premises from January 1 through June 15, 2010.

The sixth count charges Licensee with violations of Section 404 of the Liquor Code [47 P.S. §4-404]. The charge is that between January 1 and June 15, 2010, Licensee's licensed corporation was not the only one pecuniarily interested in the operation of the licensed business.

The seventh count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding July 27, 2010.

An evidentiary hearing was conducted on January 10, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 30, 2010 and completed it on July 28, 2010. (N.T. 35-36)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on September 13, 2010, as amended. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-9, N.T. 41)

Count Nos. 1 and 2:

3. A Bureau Enforcement Officer entered the premises in an undercover capacity on April 4, 2010 at approximately 12:50 a.m. There was a sign on the door which indicated that smoking was permitted although Licensee does not have an exemption. Licensee permitted smoking in the premises. (N.T. 41-48)
4. On the subsequent dates charged, a Bureau Enforcement Officer observed the smoking permitted sign. He also saw patrons smoking. (N.T. 48-52)

Count No. 3:

5. On each of the days within the fifteen day period charged, a Bureau Enforcement Officer went to the premises to determine whether it was open. The visits occurred at various times during the day. The premises was locked and closed on each visit. (N.T. 52-54, N.T. 65-68)

Count No. 4:

6. On the dates charged, Licensee issued checks for the purchase of beer to three Importing Distributors. All of the checks were dishonored due to insufficient funds. (N.T. 12-34, Commonwealth Exhibit No. C-1 through C-8)

Count No. 5:

7. During the period charged, Licensee failed to provide the Pennsylvania Liquor Control Board with information regarding the involvement of Kevin Kocher in the operation of the licensed premises. (N.T. 56-58)

Count Nos. 6 and 7:

8. On July 27, 2010, a Bureau Enforcement Officer spoke to a woman (Ms. L.), by telephone, who was assisting Licensee's President, Mr. J. The Officer requested to see records. Ms. L. could not help the Officer. The Officer then spoke to Mr. K., who was operating the business by virtue of an unlawful pecuniary interest. Mr. K. advised the Officer that he did not keep many records and he had nothing more to do with the business. Mr. K. advised the Officer he was leasing the business beginning January 1, 2010. It was a verbal lease with Mr. K. and Licensee's President, Mr. J. Mr. K. paid \$1,000.00 a month plus utilities. (N.T. 56-58)

9. On every visit the Bureau Enforcement Officer made to the premises, Mr. K. was running the business. No one has been able to locate Mr. K. The only information the Officer had was a telephone number. (N.T. 58-62)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 3, 3, 4, 5, 6 and 7 are **sustained** as charged.

DISCUSSION:

I sustain Count Nos. 5, 6 and 7 based on the declarations made by Mr. K. I find them to be Declarations Against Penal Interest as every violation of Liquor Code Article IV constitutes a crime. Mr. K. was unavailable for the hearing.

I also invoke the Legal Residuuum Rule which provides that unobjected to, inadmissible hearsay may not form the basis of a finding of fact unless corroborated by other sufficient evidence. This record does have other sufficient evidence. That evidence is in the form of the checks which were returned for insufficient funds. Each of those checks identifies Mr. K. as the operator of the business.

PRIOR RECORD:

Licensee has been licensed since December 12, 1991, and has had six prior violations:

Adjudication No. 96-0065. Fine \$450.00.

1. Furnished false information regarding sales of food and beverages when applying for a Sunday Sales Permit.
2. Falsified records covering the operation of the licensed business.

Adjudication No. 02-0487. Fine \$200.00.

Operated the licensed establishment without a valid health permit.

Adjudication No. 03-1570. Fine \$1,000.00 and 1 day suspension.

Sales to a minor.
May 11, 2003.

Adjudication No. 07-1532. Fine \$1,500.00 and RAMP training mandated.

Sales to a minor.
April 28 and 29, 2007.

Adjudication No. 08-0796. Fine \$500.00 and 1 day suspension with thereafter conditions. Licensee's request for reconsideration modified penalty to 2 days suspension.

1. Failed to comply with the Order of the Administrative Law Judge mandating RAMP training.
February 7 through March 20, 2008.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.
March 19, 2008.

Adjudication No. 09-2240. 1 day suspension.

Sales after your license expired and had not been renewed and/or validated.
September 2, 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 type found in Count Nos. 1, 2, 3, 4, 5, 6 and 7, in this case.

Ordinarily, the group of violations herein would lead me to impose severe sanctions. The Bureau alerted me that Mr. J., is extremely ill and incapacitated. Ms. L. was assisting him as best she could. As this information is mitigating and presented by the Bureau, I accept it for the truth of the matter asserted.

Pennsylvania Liquor Control Board records indicate the license has yet to be placed into safekeeping. In most cases, I would impose a suspension until such time as Licensee places the license on safekeeping. The peculiar facts suggest doing so here is meaningless. Therefore I direct the Licensing Bureau to mark the file to indicate the license is in safekeeping.

Recognizing that Licensee will not likely operate again and that Mr. J's illness caused him to lease the business. I impose:

- Count Nos. 1 and 2 – merged - \$500.00 fine.
- Count No. 3 - \$200.00 fine.
- Count No. 4 - \$200.00 fine.
- Count Nos. 5 and 6 – merged - \$500.00 fine.
- Count No. 7 - \$200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,600.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 31ST day of January, 2011.



Felix Thau, A.L.J.

pm

NOTICE: 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.

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

Citation No. 10-1882
TWO HEARTS, INC.