

Mailing Date: JUNE 8 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1898
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-407804
	:	
SHAD HANNA'S EAST INC	:	
1046 BUTLER AVE	:	LID-11444
NEW CASTLE PA 16101-4247	:	
	:	
	:	
LAWRENCE COUNTY	:	
LICENSE NO. R-SS-4462	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Michael C. Nickles, Esq.

LICENSEE COUNSEL: Pro Se

BACKGROUND:

This proceeding arises out of a citation that was issued on September 10, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Shad Hanna's East, Inc., License Number R-4462 (hereinafter Licensee).

Count one of the citation charges Licensee with violation of Section 471(d) of the Liquor Code [47 P.S. §4-471(d)], in that from December 11, 2009 through June 30, 2010, Licensee failed to comply with the order of the Administrative Law Judge at Citation No. 09-1092C mandating responsible alcohol management training.

Count two of the citation charge 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 employees, failed to return its Restaurant 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 March 12 and June 30, 2010.

The investigation which gave rise to the citation began on February 9, 2010 and was completed on August 23, 2010. The notice of violation letter was mailed to Licensee on August 25, 2010.

A consolidated evidentiary hearing with Case No. 10-1997 was held on this matter on April 27, 2011, in Erie, 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:

Counts One & Two

1. Licensee is a corporation located in Lawrence County, Pennsylvania and holds Restaurant License Number R-SS-4462. (N.T. 4).
2. Licensee's address on record with the Board is: 1046 Butler Avenue, New Castle, Pa., 16101. (N.T. 7, 14-15).
3. As a result of the adjudication of Citation No. 09-1092C, it was mandated that Responsible Alcohol Management Training be completed on or before December 10, 2009. (N.T. 8).
4. On Tuesday, February 23, 2010, at 3:25 p.m., an enforcement officer arrived at Licensee's premises to conduct a routine inspection and met with Licensee's board approved manager, Robert Hanna, who indicated that they had not completed R.A.M.P. certification because they were too busy to schedule any classes, and he could not access the needed financial records. (N.T. (8-9)).
5. On March 1, 2010, Licensee's board approved manager informed the officer that the licensed premises was closed due to a fire and the financial records were not available. (N.T. 9).
6. On April 26, 2010, the enforcement officer met with Licensee's board approved manager and president at their residence and reviewed Licensee's financial records. (N.T. 10).
7. Barbara Hanna, the president informed the officer that Licensee had not completed R.A.M.P. certification, and the officer told Licensee that the license and wholesale liquor purchase cards must be placed in safekeeping. (N.T. 10).
8. On March 15, 23, 29 and 31, 2010 the enforcement officer attempted to contact Licensee to see if the license had been placed in safekeeping due to it not being open. (N.T. 10-11).
9. On May 17, June 9, and July 1, 2010, the officer checked with the Board and found that Licensee had not placed the license in safekeeping. (N.T. 11-12).
10. On August 5, 2010, the enforcement officer requested certification from the Board that the license was not placed into safekeeping. (N.T. 12).

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11. Licensee did not complete R.A.M.P. certification as mandated under case No. 09-1092C. (N.T. 13).

CONCLUSION OF LAW:

Counts One & Two -- Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified in detail as to his investigation of Licensee's having not received R.A.M.P. certification as ordered under Case No 09-1092C. Licensee did not appear at the hearing although a notice of hearing was mailed to its address on record with the Board.

I find the officer's testimony to be credible. As such, the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since November 17, 1987, and has twenty (20) prior violations, to wit:

Citation No. 93-0836. Fine \$1,000.00.

1. Sales to a minor.

Citation No. 94-0306. Fine \$450.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machine).

Citation No. 95-0074. Fine \$1,250.00 and 1 day suspension.

1. Sales to a minor.

Citation No. 01-1157 and 01-1614 as consolidated. Fine \$1,500.00.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Sold alcoholic beverages in temporary outside serving area contrary to the terms and conditions of the temporary extension approval letter dated June 12, 2001.
3. Noisy and/or disorderly conduct.

Citation No. 02-1715. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside.
May 10, June 16 and August 3, 2002.

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Citation No. 03-0975. Fine \$400.00.

1. Used loudspeakers or devices whereby music could be heard outside.
On 22 dates between November 30, 2002 and April 27, 2003.

Citation No. 03-1505. Fine \$450.00.

1. Used loudspeakers or devices whereby music could be heard outside.
July 18, 25, August 9 and 10, 2003.

Citation No. 04-0637. Fine \$900.00.

1. Used loudspeakers or devices whereby music could be heard outside.
February 20, 21, 27, 28, March 5, 6, 13, 14 and 19, 2004.

Citation No. 05-0695X. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages.
January 25, 2005.

Citation No. 05-1848X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages.
July 1 and 2, 2005.

Citation No. 06-1803X. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages.
May 19, 2006.

Citation No. 06-2480X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages.
July 31, 2006.

Citation No. 07-2599X. Fine \$300.00.

1. Issued worthless checks in payment for malt or brewed beverages.
August 18, 21, September 1 and 4, 2007.

Citation No. 08-1961X. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages.
May 20, 2008.

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Citation No. 08-2606X. Fine \$400.00.

1. Issued worthless checks in payment for malt or brewed beverages.
July 30, September 3 and 4, 2008.

Citation No. 09-0331. Fine \$300.00.

1. Permitted smoking in a public place where smoking was prohibited.
January 30, 2009.
2. Failed to post signage as required by the clean indoor air act.
January 30, 2009.

Citation No. 09-1092C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.
March 31, 2009.

Citation No. 09-2938. Fine \$400.00. Fine not paid and license suspended one day and thereafter until fine paid. Fine still not paid and license revoked.

1. Permitted smoking in a public place where smoking was prohibited.
May 17, June 17, July 31, August 8, 9, September 6, October 4 and 16, 2009.
2. Failed to post signage as required by the Clean Indoor Air Act.
May 17, June 17, July 31, August 8, 9, September 6, October 4 and 16, 2009.

Citation No. 10-0169. Fine \$600.00.

1. Permitted smoking in a public place where smoking was prohibited.
December 22 and 29, 2009.
2. Failed to post signage as required by the Clean Indoor Air Act.
December 22, 29, 2009 and January 1, 2010.

Citation No. 10-1409X. License revoked.

1. Issued worthless checks in payment for malt or brewed beverages.
February 18, 2010.

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.

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I take administrative notice that the license is inactive and was revoked under citations 09-2938 and 10-1409X.

After due consideration of the circumstances giving rise to the citation, the Licensee's citation history, the following penalty will be imposed in this case:

Count One – Revocation of license.

Count Two – Revocation of license.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that License Number R-SS-4462 issued to Shad Hanna's East, Inc., be REVOKED effective at 7:00 a.m. on Monday, July 11, 2011, any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is CANCELLED.

JURISDICTION IS RETAINED.

Dated this 3RD day of JUNE, 2011.



Robert F. Skwaryk, J.

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.

IF FILING AN APPEAL, IT MUST BE RECEIVED WITHIN 30 DAYS OF THE MAILING DATE OF THE ADMINISTRATIVE LAW JUDGE'S ORDER; MAIL TO OR CONTACT THE PA. LIQUOR CONTROL BOARD, OFFICE OF CHIEF COUNSEL, ROOM 401, NORTHWEST OFFICE BLDG., HARRISBURG, PA 17124-0001, PHONE NO. 717-783-9454.