

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. 10-1997
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-413016
	:	
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: Emily L. Gustave, Esq.
LICENSEE COUNSEL: Pro Se

BACKGROUND:

This proceeding arises out of a citation that was issued on September 24, 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).

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 31, June 5, 6 and 29, 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 May 14, 2010 and was completed on August 24, 2010. The notice of violation letter was mailed to Licensee on September 8, 2010.

A consolidated evidentiary hearing with Case No. 10-1898 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:

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. A Supplemental Order to Citation No. 09-2938 imposed a one day suspension effective Monday, May 31, 2010 and continuing thereafter until the fine issued in the adjudication was paid. (N.T.19-20).
4. On Monday, May 31, 2010, at 8:30 p.m., an enforcement officer visited the licensed premises and found it closed and boarded up, with no suspension placard posted. (N.T. 24-25).
5. On Saturday, June 5, 2010, at approximately 12:15 a.m., an enforcement officer visited the licensed premises and observed that all of the entrances and windows were boarded and that the business was closed and dark, due to a recent fire. (N.T. 20-21).
6. The officer noted that Licensee had not posted a Notice of Suspension placard anywhere on the premises. (N.T. 20-21).
7. On Sunday, June 6, 2010, at approximately 1:45 p.m., the enforcement officer returned to the licensed premises, observed that all of the entrances and windows were boarded and that no Notice of Suspension placard was posted on the premises. (N.T. 21).
8. On Tuesday, June 29, 2010, at approximately 6:00 p.m., the enforcement officer returned to the licensed premises, observed that all of the entrances and windows were boarded and that no Notice of Suspension placard was posted on the premises. (N.T. 21).
9. On Wednesday, July 7, 2010, at 7:35 p.m., July 28, 2010, at 7:50 p.m., August 7, 2010, at 12:10 a.m., and August 24, 2010, at 7:15 p.m., the officer returned to the licensed premises and found it closed and boarded up with no suspension placard posted. (N.T. 22-23).

CONCLUSION OF LAW:

Sustained as charged.

SHAD HANNA'S EAST, INC.

Citation No. 10-1997

DISCUSSION:

At the hearing held on the matter, two enforcement officers testified to visiting the licensed premises on the dates listed in the citation, and found the building was closed and boarded up with no suspension placard posted.

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.

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.

SHAD HANNA'S EAST, INC.

Citation No. 10-1997

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.

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.

SHAD HANNA'S EAST, INC.

Citation No. 10-1997

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.

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

SHAD HANNA'S EAST, INC.
Citation No. 10-1997

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.

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.