

Mailing Date: MAR 17 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2124
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-418713
v.	:	
	:	LID - 16005
SUE ELLEN M. TRACEY	:	
T/A PENN LUNCH	:	
301 LEHIGH AVE.	:	
PALMERTON, PA 18071-1809	:	
	:	
CARBON COUNTY	:	
LICENSE NO. R-AP-13231	:	
	:	

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 October 6, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Sue Ellen M. Tracey, t/a Penn Lunch (Licensee), License Number R-AP-13231.

The citation¹ charges Licensee with a 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)]. The charge is that on September 1, 2010, Licensee, by servants, agents or employes, sold alcoholic beverages after her Restaurant Liquor license expired on August 31, 2010, and had not been renewed and/or validated.

An evidentiary hearing was conducted on February 9, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation at the hearing.

1. Commonwealth Exhibit No. C-2, N.T. 9.

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

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on December 23, 2010 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was signed for by Tammy Jankowski on December 29, 2010.
2. The Bureau began its investigation on September 1, 2010 and completed it on September 13, 2010. (N.T. 7)
3. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on September 20, 2010. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)
4. On September 1, 2010, a Bureau Enforcement Officer went to the licensed premises at 4:50 p.m. Licensee was open and in operation selling alcoholic beverages. The license expired on August 31, 2010. The Officer identified himself and advised Licensee to cease and desist sales of alcoholic beverages as Licensee did not have a current license to do so. (N.T. 9-11)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since December 8, 1978, and has had eight prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-4):

Adjudication No. 89-2147. Fine \$1,000.00.
Sales between 2:00 a.m. and 7:00 a.m.

Adjudication No. 90-1410. Fine \$350.00.

Not a bona fide restaurant in that there were
insufficient seating accommodations at tables.

Adjudication No. 93-1217. 1 day suspension with thereafter
conditions.

Not a bona fide restaurant in that chairs at tables
were insufficient.

Adjudication No. 01-0159. 2 days suspension.

Possessed or operated gambling devices or
permitted gambling on the licensed premises
(machines, football pool).

Adjudication No. 08-0690C. Fine \$1,250.00 and RAMP training
mandated.

Sales to a minor.
March 5, 2008.

Adjudication No. 08-2782. 1 day suspension.

Failed to comply with the Order of the Administrative Law
Judge mandating RAMP training. September 17 to
October 23, 2008.

Adjudication No. 10-0473. 5 days suspension.

1. Possessed or operated gambling devices or
permitted gambling on the licensed premises (sign
up book and machines).
November 15, December 10, 2009 and February 18,
2010.
2. Sales on Sunday after 2:00 a.m.
November 15, 2009.

Adjudication No. 10-0930. Fine \$100.00 and 1 day suspension
and thereafter until fine paid.

Permitted entertainment and/or dancing without an
Amusement Permit.
April 10, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Further, 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. The following Adjudications (08-0690C and 10-0473), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

I impose a \$1,750.00 fine and a one day suspension.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,750.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant Liquor license (including all permits) of Sue Ellen M. Tracey, t/a Penn Lunch, License No. R-AP-13231, be suspended for a period of one day, **BEGINNING** at 7:00 a.m., on Monday, May 2, 2011, and **ENDING** at 7:00 a.m., on Tuesday, May 3, 2011.

Licensee is directed, on Monday, May 2, 2011, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Tuesday, May 3, 2011, at 7:00 a.m., to remove the placard of suspension and return her license to its original wall location.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 4TH day of March, 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, Pennsylvania 17110-9661

Citation No. 10-2124
SUE ELLEN M. TRACEY