

Mailing Date: SEP 09 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2136
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-418789
v.	:	
	:	LID - 63306
ZAMORTH, INC.	:	
T/A ERNIE G'S PUB & EATERY	:	
1022 MAIN ST.	:	
AVOCA, PA 18641-1608	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. H-AP-SS-3632	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: ELAINE S. ZAMBETTI, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 13, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against ZAMORTH, INC., License Number H-AP-SS-3632 (hereinafter "Licensee").

The citation charges Licensee with 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)] in that on September 2, 2010, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor license expired on August 31, 2010, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on September 2, 2010 and was completed on September 20, 2010; and notice of the violation was sent to Licensee by Certified Mail on September 23, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 26, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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. Licensee's hotel liquor license expired on August 31, 2010, and, as of September 2, 2010, Licensee did not possess a valid liquor license or temporary authority to operate (N.T. 10 and Exhibit C-4).
2. On September 2, 2010 at 7:10 p.m., an officer of the Bureau entered the licensed premises. He found 14 patrons present at that time (N.T. 10).
3. Upon entry the officer ordered and received a 12-ounce bottle of Coors Light beer for which he paid \$2.00 (N.T. 10).
4. The officer observed numerous other sales of alcoholic beverages taking place (N.T. 10).
5. The only liquor license that the officer noted on the premises had expired on August 31, 2010 (N.T. 10).

CONCLUSION OF LAW:

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

DISCUSSION:

Licensee appeared at the hearing in this matter through its president and indicated that it had only been in business for a matter of six weeks at the time that this violation occurred. She mistakenly thought that she had one year to operate from the date that the license was issued.

PRIOR RECORD:

Licensee has been licensed since April 26, 2010, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

The circumstances in this case are unusual in that the Licensee had only been initially issued its liquor license some six weeks before it expired. Licensee's president mistakenly thought she had one year from that issuance to operate before a renewal was necessary.

Under the circumstances of this case, the penalty imposed shall be suspension of license for a period of one day.

ORDER

IT IS HEREBY ORDERED that the hotel liquor license (including all permits) of ZAMORTH, INC., License No. H-AP-SS-3632 be suspended for a period of one day **BEGINNING** at 7:00 a.m. on Tuesday, October 11, 2011 and **ENDING** at 7:00 a.m. on Wednesday, October 12, 2011.

Licensee is directed on October 11, 2011 at 7:00 a.m. to place the enclosed 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 October 12, 2011 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

Jurisdiction is retained.

Dated this 31ST day of August, 2011.



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.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.