

Mailing Date: AUG 11 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2374
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-420439
v.	:	
	:	LID - 53039
SEM HOSPITALITY, INC.	:	
209 MILLER ROAD	:	
HONESDALE, PA 18431-9714	:	
	:	
	:	
WAYNE COUNTY	:	
LICENSE NO. R-AP-SS-2731	:	

**BEFORE JUDGE THAU
BUREAU COUNSEL STRONG
LICENSEE: STEPHEN MACKLE, PRO SE
(VIA TELEPHONE)**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 5, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against SEM HOSPITALITY, INC., License Number R-AP-SS-2731 (Licensee).

The citation 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 October 1, 2010, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Restaurant Liquor license expired on September 30, 2010, and had not been renewed and/or validated.

An evidentiary hearing was conducted on June 22, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

No one appeared on behalf of Licensee. I placed a telephone call to Mr. M., Licensee's President. Mr. M. indicated that Licensee was not disputing that alcoholic beverages were sold on October 1, 2010 as charged (N.T. 6).

Mr. M. claimed that Licensee received authority to operate that day. I allowed Mr. M. to provide proof of that authority by no later than July 13, 2010 (N.T. 9-10). Having received no information, I must assume Licensee's defense cannot be established.

As Mr. M. did not dispute that Licensee was selling alcoholic beverages on the date charged, I proceeded with the hearing ex parte.

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 October 1, 2010 and completed it on October 15, 2010 (N.T. 11).

2. The Bureau sent a notice of alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on October 20, 2010. The notice alleged violations as charged in the citation (Commonwealth Exhibit No. C-1, N.T. 11).

3. On the date charged, a Bureau Enforcement Officer entered the premises at 6:35 p.m. Licensee was open and in operation selling alcoholic beverages although the license expired on September 30, 2010 (N.T. 12-13).

CONCLUSION 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 July 16, 2004, and has had four prior violations (Commonwealth Exhibit C-4):

Adjudication No. 06-1543. Fine \$1,250.00 and RAMP training mandated.

Sales to a minor. May 18, 2006.

Adjudication No. 06-2616. Fine \$1,250.00.

Sold alcoholic beverages after its Restaurant Liquor license expired on September 30, 2006 and had not been renewed and/or validated. October 7, 2006.

Adjudication No. 07-0308. Fine \$200.00 and RAMP training mandated.

Failed to comply with the Order of the Administrative Law Judge mandating RAMP training. December 21, 2006 through January 19, 2007.

Adjudication No. 10-0081X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages. November 24, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Mr. M's protestations regarding his belief that Licensee was authorized to operate, sound a bit hollow because of Adjudication No. 06-2616 in which the same charge was sustained. Licensee should have learned to be more careful. Accordingly I impose a \$1,500.00 fine.

ORDER

THEREFORE, it is hereby ordered that Licensee SEM HOSPITALITY, INC., pay a fine of \$1,500.00 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.

Jurisdiction is retained.

Dated this 3RD day of August, 2011.



Felix Thau, A.L.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.

Detach here and submit 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.** Make 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. 10-2374
SEM Hospitality, Inc.