

Mailing Date: JUNE 24 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2578
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-418882
v.	:	
	:	LID - 52684
ANNA MARIE DAVIS	:	
338-340 E. NORTHAMPTON ST.	:	
WILKES BARRE, PA 18702-5814	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-1345	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: ANNA MARIE DAVIS, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 17, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against ANNA MARIE DAVIS, License Number R-AP-1345 (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 November 1, 2, 3, 4, 5 and 6, 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 September 7, 2010 and was completed on November 6, 2010; and notice of the violation was sent to Licensee by Certified Mail on November 16, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 14, 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. On September 3, 2010, this office issued an Order at Citation No. 09-2525 suspending the liquor license of Licensee for a period of six days beginning at 7:00 a.m. on Monday, November 1, 2010 and ending at 7:00 a.m. on Sunday, November 7, 2010 (Administrative Notice).

2. On each of the six days of suspension, officers of the Bureau visited the licensed premises. They found the licensed premises to be closed; however, upon close inspection found no suspension placard that was visible from the outside either on the entrance door, exit door, window or otherwise visible from the outside (N.T. 8-15).

CONCLUSION OF LAW:

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

DISCUSSION:

Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] requires in the case of suspension of a liquor license that the licensee post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside of the licensed premises a notice of suspension in the form and size and containing the provisions the Office of Administrative Law Judge may require. In this case two officers visited the licensed premises. One visited the premises on November 1, 2 and 3, and the other on November 4, 5 and 6. Each officer carefully looked around the premises and was not able to find a notice of suspension. Although Licensee claims to have posted a notice, it is clear, that even if the notice was posted it was not in a conspicuous place. Therefore, I conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since May 20, 2004, and has had thirteen prior violations:

Citation No. 04-1035. Fine \$200.00.

1. Used loudspeakers or devices whereby music could be heard outside. October 23, November 5 and 20, 2004.

Citation No. 06-2850X. Fine \$75.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. August 18 and September 28, 2006.

Citation No. 07-0155. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside. December 3, 2006.

Citation No. 07-0734X. Fine \$150.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. February 2, 2007.

Citation No. 07-1354C. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a minor. May 10, 2007.

Citation No. 07-2519. Fine \$500.00 and 4 days suspension. Fine not paid and license suspended an additional 1 day and thereafter until fine paid.

1. Sales after the license expired and had not been renewed and/or validated. September 1, 2007.
2. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension. August 27, 28, 29, 30 and 31, 2007.
3. Sales during a time when the license was suspended. August 28, 2007.

Citation No. 08-0545. Fine \$300.00 and 2 days suspension. Fine not paid and license suspended an additional 1 day and thereafter until fine paid.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. February 4, 5 and 6, 2008.
2. Sales during a time when the license was suspended. February 4 and 6, 2008.

Citation No. 08-1369. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Operated the licensed establishment without a valid health permit or license. May 5, 2008.

Citation No. 08-1989X. Fine \$225.00.

1. Issued worthless checks in payment for malt or brewed beverages. June 25, 2008.

Citation No. 09-0081X. Fine \$230.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 14, 2008.

Citation No. 09-0517. Fine \$250.00 and 1 day suspension with thereafter conditions.

1. Failed to comply with the Order of the Administrative Law Judge mandating RAMP training. December 12, 2008 through February 11, 2009.

Citation No. 09-2525. 6 days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a Notice of Suspension. October 5, 2009.
2. Sales during a time when the license was suspended. October 5, 2009.

Citation No. 09-2548. 1 day suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a Notice of Suspension. October 8, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be fine of \$200.00.

ORDER

THEREFORE, it is hereby ordered that Licensee ANNA MARIE DAVIS, pay a fine of \$200.00 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 22ND day of June, 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.

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. 10-2578
Anna Marie Davis