

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. 11-0150
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-422261
v.	:	
	:	LID - 46334
MARFRETTI, INC.	:	
T/A FRED'S LOBSTER GARDEN	:	
RR 2 BOX 87	:	
PO BOX 74	:	
TIOGA, PA 16946-0074	:	
	:	
TIOGA COUNTY	:	
LICENSE NO. H-AP-SS-EHF-4021	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL PIETRZAK  
LICENSEE: NO APPEARANCE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on February 3, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MARFRETTI, INC., License Number H-AP-SS-EHF-4021 (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 January 4, 5, 6 and 7, 2011, Licensee, by its servants, agents or employes, 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 November 15, 2010 and was completed on January 18, 2011; and notice of the violation was sent to Licensee by Certified Mail on January 21, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 23, 2011 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, RR 2, Box 87, PO Box 74, Tioga, PA 16946-0074 by certified mail on May 5, 2011. The notice set forth the date and time of the hearing as June 23, 2011 at 11:30 a.m., and the place of hearing as PA Dept. of Agriculture, 542 County Farm Road, Montoursville, PA 17754-9685.

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 October 27, 2010, this office issued an Order at Citation No. 10-0708 suspending Licensee's hotel liquor license for a period of seven days beginning at 7:00 a.m. on Monday, January 3, 2011 and ending at 7:00 a.m. on Monday, January 10, 2011 (Administrative Notice).

2. On January 4, 2011 an officer of the Bureau arrived at the licensed premises at 7:30 p.m. He found the premises to be closed. However, no suspension placard was posted (N.T. 7).

3. On January 5, 2011 the officer arrived at the licensed premises at 7:05 p.m. He found the premises to be closed; however, no suspension placard was posted (N.T. 7).

4. On January 6, 2011 the officer arrived at the licensed premises at 5:15 p.m. He found the premises to be closed; however, no suspension placard was posted (N.T. 7).

5. On January 7, 2011 the officer arrived at the licensed premises at 8:05 p.m. He found the premises to be closed; however, no suspension placard was posted (N.T. 7).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since September 14, 2000, and has had eleven prior violations:

Citation No. 06-1774. Fine \$500.00.

1. Engaged in disorderly conduct. February 17, 2006.

Citation No. 07-1025. Fine \$3,500.00 and RAMP training mandated.

1. Sales to a visibly intoxicated person. January 14, 2007.
2. Sunday sales between 2:00 a.m. and 11:00 a.m. January 14, 2007.
3. Possessed or operated gambling devices or permitted gambling on the licensed premises (cards). March 7 and April 4, 2007.

Citation No. 08-0584. Fine \$2,500.00.

1. Sales to visibly intoxicated persons. September 17, 2007.
2. Permitted entertainment and/or dancing during prohibited hours. November 11, 2007.

Citation No. 08-1833. Fine \$1,500.00.

1. Sales to minors. April 12 and 27, 2008.

Citation No. 09-0360. Fine \$1,250.00 and 1 day suspension.

1. Sales without a license after the temporary authority granted to you by the Board had expired. December 31, 2008 and January 1, 2009.

Citation No. 09-1392. Fine \$7,500.00, 20 days suspension and RAMP training mandated. Fine not paid and license suspended additional 18 days and until fine paid.

1. Sales to visibly intoxicated persons. March 21, 2009.
2. Sales to minors. April 12, 2009.

Citation No. 09-2461. Fine \$500.00.

1. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license. August 8, 23 and September 19, 2009.

Citation No. 10-0708. Fine \$2,000.00 and 7 days suspension and RAMP training mandated. Fine not paid and license suspended 5 days and until fine paid.

1. Sales to visibly intoxicated persons. February 21 and March 6, 2010.

2. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license. February 21 and March 6, 2010.

Citation No. 10-1316. Fine \$3,250.00, 10 days suspension and RAMP training. Fine not paid and license revoked.

1. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license. May 1 and 15, 2010.
2. Used loudspeakers or devices whereby music could be heard outside. May 1 and 15, 2010.
3. Sales to a visibly intoxicated person. May 15, 2010.

Citation No. 10-1888. Fine \$1,000.00 and 15 days suspension. Fine not paid and license revoked.

1. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license. August 6, 20 and 21, 2010.

Citation No. 10-2546. Fine \$3,500.00, 18 days suspension and RAMP training. Fine not paid and license revoked.

1. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license. September 3 and October 2, 2010.
2. Sales to a visibly intoxicated person. September 3, 2010.
3. Sales after the license expired and had not been renewed and/or validated. October 6, 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.

This office takes notice that this license has been previously revoked.

Under the circumstances of this case, the penalty imposed shall be revocation of the license.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. H-AP-SS-EHF-4021, issued to MARFRETTI, INC., be **REVOKED** effective with the mailing date of this order. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license has previously been revoked there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been **REVOKED**. The Licensee's right to renew his license is hereby CANCELLED.

Jurisdiction is retained.

Dated this 30<sup>TH</sup> day of August, 2011.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

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.**