

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 Licensee, by your servants, agents, or employees, sold alcoholic beverages after your Club Liquor license expired on January 31, 2011, and had not been renewed and/or validated, on February 3, 2011.

I presided at an evidentiary hearing on September 19, 2011, at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. The matter required a second day of hearing on January 20, 2012 at the same location.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on February 3, 2011 and completed it on February 15, 2011. (N.T. 13, first hearing date)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on, February 16, 2011. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7, first hearing date)

3. On February 3, 2011, a Bureau Enforcement Officer entered the premises. He noticed four patrons consuming beer. The license expired on January 31, 2011 and had yet to be renewed. (N.T. 9-10, first hearing date)

4. This renewal was the first for the current Club Officials. The appropriate renewal forms were submitted to the Pennsylvania Liquor Control Board (PLCB), but returned as incomplete. (Judge's Exhibit No. 2, N.T. 16-20, first hearing date)

5. Licensee submitted the renewal a second time. It was returned on January 21, 2011 indicating the renewal was still incomplete. (N.T. 23-27, first hearing date)

6. On Friday evening, at 6:00 p.m., January 28, 2011, the Steward retrieved the mail and noticed that the renewal application was returned. The incomplete page two was returned in this mailing but had not been in prior mailings. On Monday morning January 31, 2011, the Steward spoke to an individual at the PLCB's Licensing Bureau. The Steward was aware the license was to expire at the end of that day. The Steward spoke to an individual about how to correct any errors in the renewal so that Licensee could remain open, without interruption. During the telephonic discussion, the Steward interpreted some of the statements she heard as permitting Licensee to operate without interruption and without any further paperwork, pending the PLCB's issuance of a new license. (N.T. 28-32, first hearing date)

7. The Steward spoke to a Clerk Supervisor II (CS II) in the Licensing Bureau. The CS II, is a supervisor in the Unit that processes renewals. He and his Unit are not authorized to issue temporary authority. The CS II did not advise the Steward that Licensee had temporary authority and also did not intend to do so. (N.T. 12-18, second hearing date)

CONCLUSIONS OF LAW:

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

DISCUSSION:

I believe the Steward was truthful as to her understanding of the exchange she had with the CS II. I conclude the Steward misapprehended the CS II's statements.

ADJUDICATION HISTORY:

Licensee has been licensed since July 25, 1952, and has had five prior Adjudications since July 1, 1987, the date the Office of Administrative Law Judge was established.

Docket No. 97-1421. Fine \$450.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines).

Docket No. 99-0329. Fine \$500.00.

1. Failed to clean coils once every 7 days.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (sport pool and tickets).

Docket No. 02-1712. Fine \$1,000.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines).

Docket No. 04-0499. Fine \$1,000.00 and 7 days suspension.
Possessed or operated gambling devices or permitted gambling on your licensed premises (machines) on February 5, 2004.

Docket No. 10-0497. Fine \$1,350.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time on October 18, 2009.
2. Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of 2 years immediately preceding December 17, 2009.
3. Funds derived from the operation of games of chance were used for purposes other than those authorized by law on December 17, 2009.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

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 the violation found herein.

Discretionary Component(s)

Given the mitigating factors, I impose a one day suspension.

ORDER:

Imposition of Suspension

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the License, for one day, beginning Wednesday, June 6, 2012, 7:00 a.m., and ending Thursday, June 7, 2012, 7:00 a.m.

I order Licensee to post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Wednesday, June 6, 2012, 7:00 a.m. The Suspension Placard may not be removed until the suspension ends.

In the event Licensee does not comply with all conditions herein, the Bureau may issue an additional citation claiming Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 22ND day of March, 2012.



Felix Thau, A.L.J.

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General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.