

Mailing Date: FEB 08 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0883
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-429045
v.	:	
	:	LID - 51821
5 TH & OAK CORP.	:	
T/A CUCINA DIMARCO	:	
148 S. OAK ST.	:	
MOUNT CARMEL, PA 17851-2146	:	
	:	
	:	
NORTHUMBERLAND COUNTY	:	
LICENSE NO. R-SS-7949	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: MARCO FIORELLINO, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 19, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 5TH & OAK CORP., License Number R-SS-7949 (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 April 22, 2011, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor license expired on March 31, 2011, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on April 7, 2011 and was completed on May 2, 2011; and notice of the violation was sent to Licensee by Certified Mail on May 5, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 16, 2011 in the Pa. Department of Agriculture, 2130 County Farms Road, Montoursville, 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 Restaurant Liquor license expired on March 31, 2011, and, as of April 22, 2011, Licensee did not possess a valid liquor license nor did the corporation have temporary authority to operate on April 22, 2011.
2. On April 22, 2011, an officer of the Bureau arrived at the licensed premises and observed it to be open (N.T. 12).
3. Upon entering the licensed premises the officer observed a female bartender rendering service to approximately 25 patrons (N.T. 12).
4. The officer ordered and received a 12 ounce bottle of Miller Lite beer for which he paid \$2.00 (N.T. 12).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since December 3, 2003, 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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee 5TH & OAK CORP., pay a fine of \$1,250.00 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 31ST day of January, 2012.



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. 11-0883
5th and Oak Corp.