

Mailing Date: FEB 03 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-1193
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-429066
v.	:	
	:	LID - 59091
WRIGHTS SEAFOOD RESTAURANT,	:	
LLC	:	
1837 WASHINGTON ST.	:	
HEIDELBERG	:	
CARNEGIE, PA 15106-4042	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-14204	:	

BEFORE: JUDGE FRISK

APPEARANCES:

BLCE COUNSEL: Michael C. Nickles, Esquire

LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 18, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Wrights Seafood Restaurant, LLC, License Number R-AP-SS-14204 (hereinafter Licensee).

The citation charges Licensee with violation of Section 474.1(a) of the Liquor Code,[47 P.S. §4-474.1(a)] and Section 7.31(a) of the Liquor Control Board Regulations, [40 Pa. Code §7.31(a)] in that Licensee, by its servants, agents or employees, failed to return its Restaurant Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after its licensed establishment had not been in operation for a period of fifteen (15) consecutive days between February 21, 2011 and May 31, 2011.

An administrative hearing was conducted on November 29, 2011, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael C. Nickles, Esquire. The hearing was held ex parte.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on April 8, 2011, and completed its investigation on June 13, 2011. (Exhibit C-1)

2. The Bureau notified Licensee of the nature of the alleged violation disclosed by its investigation in a letter dated June 22, 2011, which was sent by certified mail and was returned as unclaimed. (N.T. 7, Exhibit C-2)

3. The citation was issued on July 18, 2011, and was sent by certified mail and returned as unclaimed. (N.T. 9, 10, Exhibits C-3, C-4)

4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on October 7, 2011 by first class mail as well as certified mail.

5. The aforementioned certified mailing of the notice of hearing was returned as undeliverable.

6. This investigation commenced as a result of the Bureau's suspension check at Citation No. 10-0616 wherein a suspension was imposed commencing at 7:00 a.m. on Monday, May 9, 2011 and continuing until Licensee paid its late fine. (N.T. 10)

7. On Monday, May 9, 2011 at 2:00 p.m., an Enforcement officer approached Licensee's premises and found the premises closed, locked and empty with no suspension placard posted anywhere visible from outside the premises. (N.T. 10)

8. On May 10, 2011, the Enforcement officer checked the Board's website and found that Licensee's Restaurant Liquor license was active and that Licensee had not yet paid the overdue fine at Citation 10-0616. (N.T. 10-11)

9. The Enforcement officer made additional visits to Licensee's premises on May 11, 12, 16, 18, 23, 24, 26 and on June 1, 2, 3 and 4, 2011 and found that Licensee's premises was closed, locked and empty and no suspension placard was visible from outside the premises during any of the visits. (N.T. 11-12)

10. On June 8, 2011, the Enforcement officer contacted Licensee's LLC member, Joseph DeCarlo by phone. Mr. DeCarlo advised the Enforcement officer that Licensee's premises closed permanently on February 21, 2011 due to financial reasons and has never reopened. (N.T. 12)

11. A review of Board records reveals that Licensee's Restaurant Liquor license remained active and Licensee did not return its Restaurant Liquor license or its Wholesale Liquor Purchase Permit Cards during the period from February 21, 2011 through May 31, 2011. Licensee's Restaurant Liquor license became inactive as of June 1, 2011 due to the Board's refusal to renew this license. (N.T. 12-13, Exhibit C-7)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. Licensee, by its servants, agents or employees, failed to return its Restaurant Liquor License and Wholesale Liquor Purchase Permit Cards to the Board after its licensed establishment had not been in operation for a period of fifteen (15) consecutive days between February 21, 2011 and May 31, 2011, in violation of Section 474.1(a) of the Liquor Code,[47 P.S. §4-474.1(a)] and Section 7.31(a) of the Liquor Control Board Regulations, [40 Pa. Code §7.31(a)].

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

PRIOR RECORD:

Licensee has been licensed since November 28, 2007, and has had one (1) prior violations.

Citation No. 10-0616. Fine \$1,300.00 and one (1) day suspension
In a second Supplemental Order mailed July 14, 2011, Licensee's
Restaurant Liquor License was revoked.

1. Violated the tax reform code of 1971, in that you failed and/or refused to remit employer tax and sales tax due and owing. (LL and Tax Reform Code).
April 1, 2009 through January 31, 2010
2. Your sole member pled guilty to violations of Section 7208, Subsection C, of Act 46 of 2003 and was fined \$378.50. (LL)
November 30, 2009.

Wrights Seafood Restaurant LLC
Citation No. 11-1193

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.

The record discloses that Licensee's Restaurant Liquor license was revoked effective July 14, 2011 at Citation No. 10-0616.

For the foregoing reasons, Licensee's Restaurant Liquor license shall be revoked.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. R-AP-SS-14204, issued to Wrights Seafood Restaurant, be **REVOKED** for administrative purposes 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 is inactive, there is no license to return; therefore, the Bureau of Licensing, is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

Jurisdiction is retained to ensure compliance with this order.

Dated this 31ST day of January, 2012.



Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE 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.