

Mailing Date: MAR 06 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-1395
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-432844
v.	:	
	:	LID - 11075
ESTATE OF ALAN W. PARROTT	:	
DEBRA L. PARROTT, EXECUTRIX	:	
T/A PARROT'S PUB	:	
1620-22 SPRING GARDEN AVENUE	:	
PITTSBURGH, PA 15212	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-3654	:	

BEFORE: JUDGE FRISK

APPEARANCES:

BLCE COUNSEL: Emily L. Gustave, Esquire

LICENSEE COUNSEL: Debra L. Parrott, Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 5, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Estate of Alan W. Parrott, Debra L. Parrott, Executrix, t/a Parrott's Pub, License Number R-AP-SS-3654 (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 June 29, 2011, Licensee, by its servants, agents or employees, sold alcoholic beverages after its Restaurant Liquor license expired on May 31, 2011, and had not been renewed and/or validated.

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An administrative hearing was conducted on January 31, 2012, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily L. Gustave, 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 June 29, 2011, and completed its investigation on July 11, 2011. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated July 20, 2011, which was sent by certified mail and not returned. (Exhibit C-2)
3. The citation was issued on August 5, 2011, and was sent by certified mail and return unclaimed. (Exhibits C-3, C-4)
4. On June 29, 2011, the Bureau was notified by the Board that Licensee's Restaurant Liquor License expired on May 31, 2011 and had not been renewed. (N.T. 6)
5. On Wednesday, June 29, 2011 at 8:00 p.m., a Liquor Enforcement officer entered Licensee's premises in an undercover capacity and observed a female tending bar and rendering service to nine patrons. (N.T. 12)
6. Upon approaching the bar, the Enforcement officer observed a patron in possession of a 12-oz. bottle of Budweiser beer and another patron in possession of a 12-oz. bottle of Miller Lite beer. (N.T. 12)
7. The Enforcement officer then purchased a 12-oz. bottle of Miller Lite beer for \$2.00 from the bartender. The officer noted that the bartender placed the \$2.00 accepted for the bottle of beer into an open cash register drawer which transaction did not appear to be recorded. (N.T. 12)
8. Moments later, the Enforcement officer observed another patron purchase a 12-oz. bottle of Coors Light beer from the bartender. The patron provided US currency in payment for this purchase and the bartender again placed the money into the open cash register drawer and did not appear to record the transaction. (N.T. 13)
9. The Enforcement officer then observed Licensee's bartender serve a 12-oz. bottle of Miller Lite beer, a shot of Jagermeister, and a Captain Morgan Rum and Pepsi mixed drink to

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other patrons. Again, the bartender placed money into the open cash register drawer and did not appear to record these transactions.(N.T. 13)

10. The Enforcement officer departed Licensee's premises at 8:12 p.m. with nine patrons present. (N.T. 14)

11. On Monday, July 11, 2011, the Bureau received an Attestation from the Board which certified that Licensee's Restaurant Liquor License expired on May 31, 2011 and had not been renewed or validated, and Licensee otherwise did not have temporary authority to operate on June 29, 2011. (Exhibit C-5)

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. On June 29, 2011, Licensee, by its servants, agents or employees, sold alcoholic beverages after its Restaurant Liquor license expired on May 31, 2011, and had not been renewed and/or validated, in 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)].

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 in this citation 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 January 11, 1983, and has had one (1) prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 10-2432. Fine \$200.00

1. Operated the licensed establishment without a valid health permit or license.
October 21, 2010.

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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.

In mitigation, the record discloses that this citation represents Licensee's first violation of this type.

In consideration of the circumstances, set forth by Licensee Debra L. Parrott at the Administrative Hearing, this court believes that a suspension of Licensee's Restaurant Liquor License for a period of one (1) day constitutes an appropriate penalty.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the Restaurant liquor license (including all permits and Licensee Discount Card) of Estate of Alan W. Parrott, Debra L. Parrott, Executrix, t/a Parrott's Pub, License No. R-AP-SS-3654 be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Tuesday, April 17, 2012 and **ENDING** at 7:00 a.m. on Wednesday, April 18, 2012.

Licensee is directed on Tuesday, April 17, 2012 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Wednesday, April 18, 2012 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction is retained to ensure compliance with this Order.

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Dated this 1ST day of MARCH, 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.