

Mailing Date: JAN 10 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 12-0926
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-444168
	:	
PHYLLIS REESE, INC.	:	
T/A REESE'S SUPPER CLUB	:	PLCB LID No.: 29101
208 S. 5 TH ST.	:	
DUQUESNE, PA 15110	:	PLCB License No.: R-AP-SS-2224
	:	
	:	
	:	
	:	
	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Michael C. Nickles, Esquire

LICENSEE COUNSEL: Licensee's Manager, Monica Ann Reese, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 20, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Phyllis Reese, Inc., License Number R-AP-SS-2224 (hereinafter Licensee).

This citation charges Licensee with a violation of Section 15.62(a) of the Liquor Control Board Regulations, [40 Pa. Code §15.62(a)] in that on May 7 and 8, 2012, Licensee, by its servants, agents or employees, 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.

Phyllis Reese, Inc.
t/a Reese's Supper Club
IN RE: 12-0926

An administrative hearing was conducted on November 20, 2012, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael C. Nickles, Esquire. Licensee's Board Approved Manager, Monica Ann Reese appeared Pro Se.

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 March 16, 2012, and completed its investigation on May 8, 2012. (N. T. 8, 18, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated June 1, 2012, which was sent by certified mail, unclaimed and was unable to be forwarded. (N. T. 8, 18, Exhibit C-2)
3. This citation was issued on June 20, 2012, and was sent by certified mail and received by Licensee on June 25, 2012. (N. T. 9, 18, Exhibits C-3, C-4)
4. Pursuant to a Supplemental Order issued at Citation No. 11-1225, Licensee's restaurant liquor license was suspended for one day commencing at 7:00 a.m. on Monday, May 7, 2012 and continuing thereafter until the fine in the amount of \$300.00 was paid. The fine was not paid until May 8, 2012 and Licensee was given authority to resume operations at 7:00 a.m. on May 9, 2012. (Official Notice)
5. On May 7, 2012 at 7:00 a.m., and again at 8:21 a.m., two Liquor Enforcement Officers arrived at Licensee's premises and observed that no suspension placard was posted anywhere visible from outside the premises. (N. T. 10-11)
6. On May 8, 2012 at 8:35 p.m., an Enforcement Officer arrived at Licensee's premises, walked around the building, and observed that no suspension placard was posted anywhere visible from outside of the premises. (N. T. 11)
7. Following his outside surveillance, the Enforcement Officer entered the bar area where two patrons were seated at the bar. The Enforcement Officer immediately recognized the bartender as Licensee's husband, Alfred Reese, who was also acquainted with the Enforcement Officer as a result of prior investigations. (N. T. 11-12)

Phyllis Reese, Inc.
t/a Reese's Supper Club
IN RE: 12-0926

8. Mr. Reese stated to the Enforcement Officer that he did not know the status of the restaurant's liquor license. The Enforcement Officer then informed Mr. Reese that the premises was currently under suspension and there was no suspension placard posted. Mr. Reese stated that he was not aware that the premises was under suspension and he would close the premises. (N. T. 12-13)

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).

CONCLUSION OF LAW:

1. The notice requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On May 7 and 8, 2012, Licensee, by its servants, agents or employees, 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, in violation of Section 15.62(a) of the Liquor Control Board Regulations, [40 Pa Code §15.62(a)].

PRIOR RECORD:

Licensee has been licensed since April 1, 1992, and has had four (4) violations.

IN RE:

Citation No. 96-0773. Fine \$750.00.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Sales to a visibly intoxicated person.

Citation No. 07-2050. Fine \$200.00.

1. Premises had an inside passage or communication to or with the residences of persons other than the licensee, corporate officer or manager.
August 8, 2007

Phyllis Reese, Inc.
t/a Reese's Supper Club
IN RE: 12-0926

Citation No. 10-2100. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Violated the Allegheny County Alcoholic Beverage Tax Law.
February 1, 2009 through July 31, 2010.

Citation No. 11-1225. Fine \$300.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Violated the Allegheny County Alcoholic Beverage Tax Law.
August 1, 2010 through April 30, 2011.

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 Bureau represents to this Court that pursuant to an Order issued by the Allegheny County Court of Common Pleas, Licensee's premises was closed and padlocked on October 3, 2012 as a result of Licensee's failure to remit taxes.

For the foregoing reasons, Licensee's Restaurant Liquor License shall be suspended for a period of two (2) days, which is deferred pending activation of Licensee's Liquor License.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of Phyllis Reese, Inc., (including all permits and Licensee Discount Card), License No. R-AP-SS-2224 be suspended for a period of two (2) days. However, the suspension period is deferred pending reactivation.

IT IS FURTHER ORDERED that the Bureau of Licensing notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the dates for suspension.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 20TH day of December, 2012.



Roderick Frisk, J.

clm

Phyllis Reese, Inc.
t/a Reese's Supper Club
IN RE: 12-0926

**LICENSEE MAY NOT RESUME OPERATION OF THE LICENSED PREMISES
UNTIL FURTHER ORDER BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE**

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.**