

Mailing Date: AUG 14 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 12-0973
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W08-445140
	:	
STARLITE HOTEL, INCORPORATED	:	
T/A STARLITE HOTEL	:	PLCB LID No.: 26487
901 W. 4 TH ST.	:	
ERIE, PA 16507-1005	:	PLCB License No.: H-AP-SS-3948
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	:	
	:	
	:	
	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily L. Gustave, Esquire
LICENSEE COUNSEL: Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 29, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Starlite Hotel, Incorporated, t/a Starlite Hotel, License Number H-AP-SS-3948 (hereinafter Licensee).

The citation charges Licensee with four counts.

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The first count charges Licensee with violation of Section 491(5) of the Liquor Code, [47 P.S. §4-491(5)] in that on May 10, 2012, Licensee, by its servants, agents or employees, failed to break empty liquor bottles within twenty-four (24) hours.

The second count charges Licensee with violation of Section 467 of the Liquor Code, [47 P.S. §4-467] in that on May 10, 2012, Licensee, by its servants, agents or employees, failed to constantly and conspicuously expose hotel liquor license under a transparent substance on its licensed premises.

The third count charges Licensee with violation of Section 491(10) of the Liquor Code, [47 P.S. §4-491(10)] in that on May 10, 2012, Licensee, by its servants, agents or employees, fortified, adulterated and/or contaminated liquor.

The fourth count charges Licensee with violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12)] in that Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding May 16, 2012.

An administrative hearing was conducted on Thursday, June 13, 2013 at 10:30 a.m., at 2084 Interchange Road, Erie, PA. 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 April 20, 2012, and completed its investigation on May 16, 2012. (N. T. 8 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 11, 2012, which was sent by certified mail and was returned unclaimed. (N. T. 8 Exhibit C-1, C-2)
3. This citation was issued on June 29, 2012, was sent by certified mail and was returned unclaimed. (N. T. 3, 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 April 19, 2013 by first class mail as well as certified mail. (Official Notice)
5. The aforementioned mailing of the notice of hearing was sent by certified mail and was not returned. (Official Notice)

COUNT ONE

6. On May 10, 2012 at 3:40 p.m., a Liquor Enforcement Officer conducted a routine inspection of Licensee's premises in the presence of Kari Teubert, who was tending bar and in charge of the premises. (N. T. 10, 11)
7. At this time, the Enforcement Officer contacted Licensee's Corporate President/- Manager Carrie Voorhis who indicated that she was unable to meet with him at the premises. (N. T. 11)
8. The Enforcement Officer proceeded with his inspection and found boxes underneath the bar counter that contained 19 empty liquor bottles. Upon questioning, Ms. Teubert indicated that all but one of the empty liquor bottles was placed in the boxes within the last 24 hours. (N. T. 12, 13)

COUNT TWO

9. During this inspection, the Enforcement Officer did not observe Licensee's hotel liquor license posted on the premises. Upon further examination, the Enforcement Officer ultimately found this license located on the far end of the bar, hidden under various papers. (N. T. 13, 14, 15)

COUNT THREE

10. The Enforcement Officer then inspected Licensee's open liquor stock and found a 750 ml. bottle of Cutty Shark Scotch Whiskey, a 750 ml. bottle of Windsor Canadian Whiskey and a one liter bottle of Jacquins London Tower Gin that were contaminated with heavy sediment and fruit flies. (N. T. 15, 16, 17)

COUNT FOUR

11. On May 16, 2012, as a result of a pre-arranged meeting, Ms. Voorhis met with the Enforcement Officer to review Licensee's records. This inspection revealed that some of the beer invoices were paid by check, however Ms. Voorhis did not possess the checking account records. The Enforcement Officer informed Ms. Voorhis that a Licensee is required to maintain documentation and/or financial records of payments for the invoices. Employee and payroll records were also unavailable. (N. T. 18, 20, 21, 23)

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 Counts one through four by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d

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653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

CONCLUSIONS 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 10, 2012, Licensee, by its servants, agents or employees, failed to break empty liquor bottles within twenty-four (24) hours, in violation of Section 491(5) of the Liquor Code, [47 P.S. §4-491(5)].

3. On May 10, 2012, Licensee, by its servants, agents or employees, failed to constantly and conspicuously expose hotel liquor license under a transparent substance on its licensed premises, in violation of Section 467 of the Liquor Code, [47 P.S. §4-467].

4. On May 10, 2012, Licensee, by its servants, agents or employees, fortified, adulterated and/or contaminated liquor in violation of Section 491(10) of the Liquor Code, [47 P.S. §4-491(10)].

5. Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding May 16, 2012 in violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12)].

PRIOR RECORD:

Licensee has been licensed since September 17, 1990, and has had two prior violations.

IN RE:

Citation No. 08-0299. Fine \$450.00.

1. Noisy and/or disorderly operation.
April 4 and July 31, 2007.

Citation No. 11-2188. Fine \$1,200.00.

1. Failed to maintain malt or brewed beverage dispensing system cleaning records.
November 3 through 16, 2011.
2. Failed to clean malt or brewed beverage dispensing system at least once every seven days.
November 3 through 16, 2011.
3. Failed to break empty liquor bottles within 24 hours.
November 16, 2011.

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4. Operated the licensed establishment without a valid health permit or license.
October 28 through November 16, 2011.
5. Not a bona fide hotel where the public may obtain meals in that there was an
insufficient supply of food.
August 31 through November 16, 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.

For the foregoing reasons, the following penalties shall be imposed. Count one - \$100.00; Count two - \$100.00; Count three - \$350.00, and Count four - \$150.00.

ORDER:

THEREFORE, it is hereby ordered that Starlite Hotel, Incorporated, t/a Starlite Hotel, License Number H-AP-SS-3948, pay a fine of \$700.00 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 to ensure compliance with this Order.

Dated this 7TH day of AUGUST, 2013.



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.

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Detach Here and Return Stub with Payment

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your 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

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