

Boardroom Restaurant, LLC (The))
Boardroom (The)) **DECISION AND ORDER**
786 Garfield Parkway) Violation Nos. 07421, 07483
Bethany Beach, DE 19947)
License No. 14439)

SUMMARY OF THE EVIDENCE

The Commissioner held a hearing on February 5, 2014 in Georgetown, Delaware at which the licensee, through its authorized representative, failed to appear despite having notice of the hearing and related charges of failing to have a lease while holding an active license to sell beer, wine, and spirits on November 6, 2013 and on January 10, 2014 (Violation Nos. 07421 and 07483).

Agent Aaron Bonniwell, of the Division of Alcohol and Tobacco Enforcement, testified the Division was contacted in late October 2013 by Ernest and Ann Raskauskas, who own Bethany Area Realty, LLC, and Route 26 Associates which is the landlord for the licensed premises. Route 26 Associates obtained a civil judgment in Justice of the Peace Court No. 7 against the licensee for unpaid rent and was granted possession of the licensed premises. A copy of the judgment was admitted into evidence. The licensee vacated the premises, and Route 26 Associates is attempting to have a new tenant enter the premises and obtain a liquor license. The Division has made numerous efforts to contact the licensee's owner, by leaving phone messages and sending emails, but with no response. The Division also contacted area police who went to the owner's last known address in Phoenixville, PA and left messages for the owner with the owner's father since October 2013. Agent Bonniwell provided his contact information to the owner's father in October 2013, with no response. The Division has also mailed certified letters to the owner, with no response.

Ann Raskauskas testified she is a principal of Route 26 Associates, which was awarded legal possession of the premises. They have collected some of the unpaid rent, but the majority is outstanding. She has not seen the owner and has not received any responses to their letters or emails. The licensee is not in the premises. The premises was stripped bare, including sinks; there are no alcoholic beverages in the premises.

THE LAW

The Commissioner may suspend any license and/or fine any licensee for the sale of alcoholic liquors if it has reasonable grounds to believe that the licensee has committed any of the following violations, or may cancel any license for the sale of alcoholic liquors for the following violations, if repeated and continuous: the licensee has violated any provision of this title or any regulation of the Commissioner pursuant thereto; and/or there is any other reason which in the opinion of the Commissioner based on public convenience or necessity warrants cancelling or suspending the license. 4 Del.C. §§ 561(b)(1), 561(b)(2).

Each application for a license for the sale of beer, wine and spirits must be accompanied by a lease for the premises, unless owned by the applicant, which must provide landlord's expressed permission for the sale of alcoholic liquors on the premises. Commissioner Rule 49.

The Commissioner, in accordance with the Delaware Administrative Procedures Act, shall adopt and promulgate rules and regulations not inconsistent with this title or of any other law of the State, and all such rules and regulations shall have the force and effect of law. 4 Del.C. § 304(a)(1).

Any fine imposed by the Commissioner, pursuant to this section, shall not exceed 10% of the estimated average gross monthly sales of alcoholic liquor for the operations of the licensee within the twelve (12) months immediately preceding the date of the finding of guilt provided that such amount exceeds \$250. In no case shall the fine imposed by the Commissioner upon a finding of guilt be less than \$250. 4 Del.C. § 914.

FINDINGS OF FACT

Based upon the testimony and exhibits submitted into the record, the Commissioner finds that the Division and Route 26 Associates made sufficient and reasonable efforts to make the owner aware of the charges against the liquor licensee and the February 5th hearing, and the licensee repeatedly and continuously failed to have a lease while holding an active license to sell beer, wine, and spirits on November 6, 2013 and January 10, 2014, in violation of 4 Del.C. §§ 561(b)(1) and Commissioner Rule 49 (Violation Nos. 07421, 07483).

ORDER

It is this _____ day of _____, 2014 the Decision and Order of the Commissioner that the licensee's liquor license is immediately revoked for failing to have a lease while holding an active license to sell beer, wine and spirits on November 6, 2013 and January 10, 2014 (Violation Nos. 07421, 07483). If there is no lease, an applicant or licensee cannot operate a licensed premises. Based upon the licensee's prior record and the testimony and evidence presented, the Commissioner is satisfied that the penalty imposed for this offense is in the public interest and will have the desired disciplinary effect. 4 Del.C. § 914.

IT IS SO ORDERED.

John H. Cordrey, Commissioner