

Mailing Date: MAY 04 2012

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

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Docket No.: 11-0036
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W05-422207
v.	:	
	:	PLCB LID No.: 58401
CIARIMBOLI ENTERPRISES, LLC	:	
T/A BOLIS BAR AND GRILL	:	PLCB License No.: H-AP-SS-4009
1498 PITT ST.	:	
JENNERSTOWN, PA 15547	:	
	:	
SOMERSET COUNTY	:	

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Nadia L. Vargo, Esquire

LICENSEE: Scott Ciarimboli, Member

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on January 18, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Ciarimboli Enterprises, LLC (Licensee).

The first count charges Licensee with violations of Section 5.23(d) of the Liquor Control Board Regulations [40 Pa. Code §5.23(d)]. The charge is that, the manager of your licensed premises, Scott Ciarimboli, was employed by or engaged in another business without Board approval, in that Ciarimboli also devotes 20 hours per week to the Pennsylvania State Store System, on or about May 11, 2010 through November 18, 2010¹.

The second count charges Licensee with violations of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by your 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 November 18, 2010.

I presided at an evidentiary hearing on October 24, 2011 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on November 12, 2010 and completed it on December 8, 2010. (N.T. 23)
2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested on, December 30, 2010. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 20)

Count No. 2

3. On November 18, 2010 a Bureau Enforcement Officer conducted an administrative inspection of the licensed premises. Licensee was unable to produce any of the establishment's income, expense records, including payroll records and liquor invoices. (N.T. 43-44)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

¹ On April 18, 2012, the Bureau filed a motion to withdraw this count.

2. I sustain Count No. 2 as charged.

ADJUDICATION HISTORY:

Licensee has been licensed since June 19, 2007, and has the following Adjudication history:

Docket No. 08-0844C. Fine \$1,700.00 and R.A.M.P. training mandated.

1. Failed to maintain complete and truthful records for a period of 2 years on March 13, 2008.
2. Sales to a minor on January 16, 2008.
3. Used loudspeakers or devices whereby music could be heard outside on November 18, December 7, 8 and 14, 2007.

Docket No. 09-0029. Fine \$4,000.00.

1. The licensed organization was not the only one pecuniarily interested in the operation of the licensed business on July 17 through September 4, 2008.
2. Refused and/or failed to provide the Board with information regarding the involvement of Justin and Kelly DiFrancesco in the operation of your licensed premises on September 4, 2008.
3. Paid for purchases of malt or brewed beverages with other than Licensee's checks on 16 dates between July 16 and September 3, 2008.
4. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years on September 4, 2008.
5. Illegal Use of Wholesale Liquor Purchase Permit Card on 10 dates between July 18 and August 20, 2008.

Docket No. 09-0594. 11 days suspension and R.A.M.P. training mandated.

1. Sales to a visibly intoxicated person on February 21, 2009.
2. Sales between 2:00 A.M. and 7:00 A.M. on February 21, 2009.
3. Continued to offer for sale one specific type of alcoholic beverage or drink at a reduced price between 12:00 midnight and 2:00 A.M. on February 21, 2009.
4. Used loudspeakers or devices whereby the sound of music could be heard outside on February 21, 2009.

Docket No. 10-1594. 3 days suspension with thereafter conditions.

1. Not a bona fide hotel in that bedrooms maintained for the accommodation of guests were insufficient in number on April 23 and May 5, 2010.
2. The manager of your licensed premises was employed by another business without Board approval on October 28, 2008 through May 10, 2010.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years on May 5, 2010.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

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 the violations found herein.

Discretionary Component(s)

Count No. 2

In three of Licensee's four prior Adjudications, Licensee did not comply with record keeping requirements. I trust Licensee has finally understood what those requirements are and will abide by all of them.

Accordingly, I impose a \$500.00 fine.

ORDER:

Imposition of Fine

Licensee must pay a \$500.00 fine within 20 days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Withdrawal

I grant the Bureau's motion to withdraw Count No. 1.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 24TH day of April, 2012.

A handwritten signature in cursive script that reads "Felix Thau". The signature is written in black ink and is positioned above a horizontal line.

Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.

Detach Here and Return Stub with Payment

The fine must be paid by cashier's check, certified check or money order. **Personal and business checks, are not acceptable unless bank certified.** 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