

Mailing Date: SEP 25 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 11-0971
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-422435
	:	
SAMBA ENTERPRISES INC.	:	
714-716 W. GIRARD AVE.	:	PLCB LID - 49626
PHILADELPHIA PA 19123-1313	:	
	:	
	:	PLCB License No. R-AP-SS-EHF-8329
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 21, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Samba Enterprises, Inc., License Number R-AP-SS-EHF-8329 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, May 3, 2012, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation contains five counts.

The first count charges Licensee with violation of Section 404 of the Liquor Code, 47 P.S. §4-404, in that during the period November 23, 2006 through June 1, 2011, the licensed corporation is not the only one pecuniarily interested in the operation of the licensed business.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on March 12, 2011, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, eighteen (18) years of age.

The third count charges Licensee with violation of Section 493(14) of the Liquor Code, 47 P.S. §4-493(14), in that on March 12, 2011, Licensee, by its servants, agents or employes, permitted fifty one (51) minors, ages unknown, to frequent the licensed premises.

The fourth count charges Licensee with violation of Section 11.6(1) of the Liquor Control Board Regulations, 40 Pa. Code §11.6(1), in that on January 14, 2011, the Wholesale Liquor Purchase Permit Card was signed as permit holder by a person other than the president, vice president, secretary or treasurer.

The fifth count charges Licensee with violation of Sections 5.23(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.23(a), in that during the period November 23, 2006 through June 1, 2011, the manager failed to devote full time and attention to the operation of the licensed business.

COUNT NOS. 1, 2, 3, 4 AND 5

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on November 17, 2010 and ended on June 1, 2011. A copy of the citation was sent to the licensed premises by certified mail, return receipt requested on June 10, 2011. That mailing was returned unclaimed. Prior to that, a notice of violation letter dated May 19, 2011 was sent to the licensed premises by certified mail, return receipt requested. That mailing was also returned unclaimed. A copy of the citation dated June 21, 2011 was sent to the licensed premises by certified mail, return receipt requested. That mailing was also returned unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on March 14, 2011 by certified mail, return receipt requested, and by first class mail. That certified mailing was returned unclaimed (N.T. 3-5 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement who has been employed with the Bureau for approximately five years arrived at the premises at 9:30 p.m. on March 12, 2011 in order to conduct an investigation. When the officer arrived at the premises, there was a line outside. The officer paid a ten dollar cover charge and was admitted to the premises. Once in, she noted there were about fifteen or so patrons inside with two female bartender (N.T. 6-7).

3. The officer noted that some of the patrons appeared to be underage. As the officer remained on the premises, the number of patrons increased. The officer called in a pre-arranged detail of officers to investigate for the presence of minors on the premises and sales to minors. The detail arrived at approximately 11:00 p.m. at which time they noted that there were fifty or so minors on the premises (N.T. 7).

4. The officer went to interview the woman, Mary Love, who indicated that she became the president and co-owner of the premises on November 23, 2006. According to the records of the Liquor Control Board, the president and co-owner are Elaine Hamideh and Michael Maruhn (N.T. 9 and Exhibit B-3).

5. Mary Love indicated that she was the owner of the premises and she believed that all the paperwork had been transferred to her. The officer attempted to contact Elaine Hamideh and was unable to contact her. She was able to speak to her ex-husband who stated that their attorney was handling everything. Mr. Maruhn stated that he does not deal with the license and he believes that his attorney filed the proper paperwork for the transfer back in 2006 (N.T. 10-11).

6. The officer went to the liquor store and found that the Wholesale Purchase Permit was in the name of John Love and not the previous owner (N.T. 11 and Exhibit B-4).

7. Officer Dever is a supervisor for the Bureau of Enforcement. On March 12, 2011, he visited the licensed premises along with undercover officers who were there to check for minors. The detail entered the premises at approximately 11:00 p.m. and talked to persons in charge to include John Love, who was later interviewed (N.T. 16-17).

8. John Love indicated that the premises was having an event for age eighteen to under twenty-one. The officer questioned him with regard to chaperones. He indicated that he did not know that he needed chaperones. The officer explained that he needed a chaperone for every five people who were under age. The officers determined that there were fourteen people over the age of twenty-one and fifty-one people under the age of twenty-one. He explained that he had several security guards that could act as chaperones. The officer explained to him that the chaperones could have no other duties (N.T. 17-18).

9. There was no separation between the minors and the alcoholic beverages in that the bar was set up in the usual fashion (N.T. 18).

10. Another officer from the Bureau of Enforcement was present on March 12, 2011. He was part of the detail set up by the assigned investigating officer. This officer was responsible for contacting the person in charge and conducting a routine inspection of the premises. The detail arrived and entered around 11:00. The officer noted a youthful appearing black male walking backwards with a twelve ounce bottle of Corona beer in his hand. He attempted to hide it when he observed the officers. The officer placed his hand on the back of the male and told him to turn around. He was issued a non-traffic citation. He was able to give him a New Jersey driver's license and it was determined that he was eighteen years of age. He was cited for possession of alcohol (N.T. 22-24).

11. B.C. was born July 21, 1992 and was nineteen years of age on March 12, 2011. He arrived at the premises at approximately 11:00 p.m. Five of his friends were on the premises. He was there to dance, have fun and drink. His friends were eighteen and nineteen years old. He consumed some portions of a Corona beer which he received from a friend (N.T. 25-28).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - During the period November 23, 2006 through June 1, 2011, the licensed corporation is not the only one pecuniarily interested in the operation of the licensed business, in violation of Section 404 of the Liquor Code, 47 P.S. §4-404.

Count No. 2 - On March 12, 2011, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, eighteen (18) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

Count No. 3 - On March 12, 2011, Licensee, by its servants, agents or employes, permitted fifty one (51) minors, ages unknown, to frequent the licensed premises, in violation of Section 493(14) of the Liquor Code, 47 P.S. §4-493(14).

Count No. 4 - On January 14, 2011, the Wholesale Liquor Purchase Permit Card was signed as permit holder by a person other than the president, vice president, secretary or treasurer, in violation of Section 11.6(1) of the Liquor Control Board Regulations, 40 Pa. Code §11.6(1).

Count No. 5 - There is insufficient evidence to conclude that during the period November 23, 2006 through June 1, 2011, the manager failed to devote full time and attention to the operation of the licensed business, in violation of Sections 5.23(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.23(a).

PRIOR RECORD:

Licensee has been licensed since January 30, 2003, and has no record of prior violations.

DISCUSSION:

Licensee stated that there was a defect in the transfer of this license. It appears, however, that the individual currently operating the premises somehow renewed the license and continued to operate the premises. The Bureau did not offer copies of the renewals, which may or may not have indicated the current officers.

On March 12, 2011, the premises was holding an event, which included minors. The event was not properly chaperoned and was unlawful, in that the liquor was not in a separate location or secured from the minors nor were their proper chaperones.

Finally, with regard to the Wholesale Liquor Purchase Permit Card, it was indeed signed by the current operators and not the president, vice-president, secretary or treasurer of record. It is imperative that the Licensee promptly contact the Liquor Board and insure that the Liquor Board is completely aware of the changes in the officers and owners.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count Nos. 1, 4 and 5 of this case.

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count Nos. 2 and 3 of this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$250.00.
- Count Nos. 2 and 3 (as merged) - \$1,500.00.
- Count No. 4 - \$200.00.
- Count No. 5 - DISMISSED.

Accordingly, we issue the following

Samba Enterprises, Inc.
In Re: Citation No. 11-0971

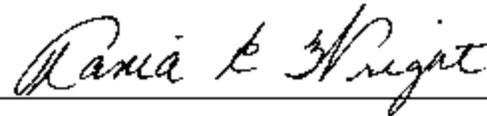
ORDER:

THEREFORE, it is hereby Ordered that Licensee, Samba Enterprises, Inc., License Number R-AP-SS-EHF-8329, pay a fine of One Thousand Nine Hundred Fifty Dollars (\$1,950.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that the requirements set forth in Section 471.1 of the Liquor Code, pertaining to Licensee's mandatory certification through the Pennsylvania Liquor Control Board Responsible Alcohol Management Program (R.A.M.P.) are hereby DEFERRED pending the renewal of Licensee's license.

Jurisdiction of this matter is retained.

Dated this 19TH day of September, 2012.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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