

Mailing Date: SEP 28 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 11-1095
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-428544
	:	
v.	:	
	:	
	:	PLCB LID - 25700
HEAD'S UP, INC.	:	
T/A LAMP POST INN	:	PLCB LICENSE NO. H-AP-SS-EHF-2162
101 E. MAIN ST.	:	
MIDDLETOWN, PA 17057-1829	:	

ADJUDICATION

BEFORE JUDGE THAU
BUREAU COUNSEL PIETRZAK
LICENSEE: J. KENNETH BUTERA, ESQUIRE

BACKGROUND:

This proceeding arises out of a citation that was issued on June 23, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against HEAD'S UP, INC., License Number H-AP-SS-EHF-2162 (hereinafter "Licensee").

The citation contains four counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 7202 and 7403 of the Tax Reform Code of 1971 [72 P.S. §§7202 and 7403] in that Licensee, Head's Up, Inc., violated the Tax Reform Code of 1971, in that it failed and/or refused to remit, in a timely manner, to the Commonwealth of Pennsylvania, Department of Revenue, sales tax and corporate tax due and owing for the period of June 30, 2010 through May 12, 2011, in the amount of \$14,217.90.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 7215, 7216 and 7318 of the Tax Reform Code of 1971 [72 P.S. §§7215, 7216 and 7318] in that Licensee, Head's Up, Inc., violated the Tax Reform Code of 1971, in that it failed and/or refused to file, in a timely manner, Employer Withholding tax returns with the Commonwealth of Pennsylvania, Department of Revenue, for the periods July 1 through September 30, October 1 through December 31, 2009, January 1 through March 31, April 1 through June 30, July 1 through September 30, October 1 through December 1, 2010 and January 1 through March 31, 2011.

The third count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 7208(c) of the Tax Reform Code of 1971 [72 P.S. §7208(c)] in that on March 21, 2011, Licensee, by its servants, agents or employes, engaged in taxable sales or service without a sales tax license.

The fourth count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)] in that on April 26, 2011, Licensee, by its servants, agents or employes, smoked and/or permitted smoking in a public place where smoking was prohibited.

The investigation which gave rise to the citation began on March 30, 2011 and was completed on May 12, 2011; and notice of the violation was sent to Licensee by Certified Mail on June 7, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 19, 2012 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Counts No. 1 and 2

1. For the period charged, Licensee failed to remit taxes, in the aggregate amount of \$14,217.90, to the Department of Revenue (N.T. 4-28).

Count No. 3

2. On the date charged, Licensee engaged in taxable sales without a sales tax license (N.T. 5-28).

Count No. 4

3. On the date charged, Licensee permitted smoking on the licensed premises (N.T. 5-28).

CONCLUSIONS OF LAW:

Counts No. 1, 2, 3 and 4 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since June 6, 1990, and has had fourteen prior violations:

IN RE:

Citation No. 90-2096. Fine \$400.00.

1. Sales to visibly intoxicated persons.

Citation No. 90-2434. Fine \$1,250.00.

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

Citation No. 91-1710. Fine \$300.00.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 04-1243. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 24, 2004.

Citation No. 05-2530. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 13 and 27, 2005.

Citation No. 06-0072. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 8, 2005.

Citation No. 07-0253. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 12, 2006.

Citation No. 07-0739. Fine \$400.00.

1. Issued worthless checks in payment for malt or brewed beverages. January 29 and 30, 2007.

Citation No. 07-2544X. Fine \$500.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 4 and 11, 2007.

Citation No. 08-0783. Fine \$1,750.00 and RAMP training mandated.

1. Sales to visibly intoxicated persons. November 18, 2007.

Citation No. 08-1772X. Fine \$600.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 27, 2008.

Citation No. 08-2431X. Fine \$650.00.

1. Issued worthless checks in payment for malt or brewed beverages. August 4, 2008.

Citation No. 09-1123X. Fine \$750.00.

1. Issued worthless checks in payment for malt or brewed beverages. March 12 and 17, 2009.

Citation No. 09-1715X. Fine \$850.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 5, 8, 12 and 19, 2009.

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.

Both the Pennsylvania Department of Revenue and the Bureau of Liquor Control Enforcement join in a request for leniency recognizing that Licensee mismanaged the business without any intent to defraud the Commonwealth. Both agencies value the goal of ending this matter in a way that closes all delinquent tax files. The parties confirm that Licensee is now current on all tax obligations and has filed all required returns.

Under the circumstances of this case, the penalty imposed shall be as follows:

Counts 1, 2 & 3 - \$300.00 fine
Count 4 - \$200.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee HEAD'S UP, INC., pay a fine of \$500.00 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.

Dated this 25TH day of September, 2012.



Felix Thau, ALJ

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MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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.

Detach here and submit 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.** Make 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

IN RE: CITATION NO. 11-1095
HEAD'S UP, INC.