

Mailing Date: AUG 17 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 11-2094
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-438775
v.	:	
	:	
D'S LUCKY BAR, INC.	:	PLCB LID No.: 53873
1257-1259 DERRY ST.	:	
HARRISBURG, PA 17104-1048	:	
and	:	PLCB License No.: E-AM-SS-3488
UNITED STATES OF AMERICA,	:	
AS LICENSE OWNER	:	

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

FOR LICENSEE

and

UNITED STATES OF AMERICA,

AS LICENSE OWNER: Michael A. Consiglio, United States Attorney

**BACKGROUND:**

This proceeding arises out of a citation, containing one count, that was issued on December 1, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against D's Lucky Bar, Inc. (Licensee).

The citation charges Licensee with a violation of Sections 404 and 471 of the Liquor Code [47 P.S. §§4-404 and 4-471]. The charge is that, in the United States District Court, for the Middle District of Pennsylvania, your sole corporate officer, Thu-Loan Tran Ngo, pled guilty to a violation of Title 21, United States Code, Section 856(a)(2), Maintaining a Drug Involved Premises, on August 8, 2011.

I presided at an evidentiary hearing on June 18, 2012 at 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on October 28, 2011 and completed it on November 2, 2011. (N.T. 10)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on November 28, 2011. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1-2, N.T. 12)

3. Licensee's Sole Corporate Officer and Manager, Thu Loan Tran-Ngo, engaged in drug trafficking on the licensed premises. The United States of America indicted him for that activity. He pled guilty to the charges on February 8, 2011. (Commonwealth Exhibit Nos. C-5-8)

4. On February 27, 2012, District Judge Conner, United States District Court for the Middle District of Pennsylvania, entered a Final Order of Forfeiture in which the subject liquor license was forfeited to the United States of America. (Judge's Exhibit No. J-2)

5. On June 13, 2012, the Pennsylvania Liquor Control Board approved a Conditional Licensing Agreement (CLA), which was endorsed by an official of the United States Marshals Service, Middle District of Pennsylvania, on behalf of the United States of America, as license owner. (Judge's Exhibit No. J-1)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. I sustain the violation as charged.

PRIOR RECORD:

Licensee has been licensed since October 22, 2004, and has the following Adjudication history:

In Re Citation No.: 08-2142C. Fine \$1,250.00 and R.A.M.P. training mandated.

Sales to a minor on August 7, 2008.

In Re Citation No.: 08-2776. 4 days suspension.

Sales to a visibly intoxicated person on October 12, 2008.

In Re Citation No.: 09-2720X, 09-2993X and 10-0344X, as consolidated. Fine \$450.00.

Issued worthless checks in payment for malt or brewed beverages dated September 21, October 13, 19, November 20, 23, December 24, 2009 and January 13, 2010.

In Re Citation No.: 10-2045. Fine \$1,300.00 and 1 day suspension.

1. Permitted smoking in a public place where smoking was prohibited on September 24, November 25, 2009, February 20 and April 1, 2010.
2. Failed to post signage as required by the Clean Indoor Air Act on September 24, November 25, 2009, February 20 and April 1, 2010.
3. Sales after the license expired and had not been renewed and/or validated on March 1 through April 4 and April 9 through 22, 2010.

PENALTY ASSESSMENT CRITERIA:

**Mandatory Requirement(s)**

Liquor Code Section 471 [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 violation found herein.

**Discretionary Component(s)**

The United States of America, as license owner, wishes to sell the license to recoup investigation and prosecution costs. In support, the United States Attorney requests a nominal fine. The Bureau joins in that request as does the Pennsylvania Liquor Control Board by virtue of entering into a CLA with the United States of America.

This matter presents another wrinkle which calls for an unusual response. The United States of America wishes to pay the fine as soon as practicable after the license is transferred. The Liquor Code mandates fine payment within twenty days of an Adjudication's mailing date.

I doubt the General Assembly considered the remarkable facts of this case when it enacted that provision of the Liquor Code. Indeed, were I to comply, I expect the United States of America to seek an injunction in an appropriate federal court prohibiting the implementation of that requirement. Given these considerations, and for the sake of judicial economy, and in keeping with the request of interested Commonwealth agencies, I will not require fine payment within twenty days.

Ordinarily, a fact pattern such as herein begs for license revocation. However, the culprit no longer has an interest in the license. His punishment far exceeds anything I am authorized to impose. Therefore, I impose a \$50.00 fine. Licensee or Licensee's successor in interest must pay the \$50.00 fine as soon as practicable after the license is transferred.

ORDER:

In Re Citation No.: 11-2094; Licensee, D's Lucky Bar, Inc.; PLCB LID No.: 53873; PLCB License No.: E-AM-SS-3488; United States of America, as license owner

### **Imposition of Fine**

I impose a \$50.00 fine which is to be paid as soon as practicable after the license is transferred.

### **Retaining Jurisdiction**

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 15<sup>TH</sup> day of August, 2012.



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](http://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

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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