

Mailing Date: SEP 27 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-0092
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-439730
	:	
E & J ENTERPRISES LLC	:	
4501-03 SHEFFIELD AVE.	:	PLCB LID - 56660
PHILADELPHIA PA 19136-3224	:	
	:	
	:	PLCB License No. R-AP-SS-7922
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 30, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against E & J Enterprises, LLC, License Number R-AP-SS-7922 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, June 14, 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 charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), in that on December 7, 2011, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2011 and had not been renewed and/or validated.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on November 30, 2011 and ended on December 7, 2011. A notice of violation letter dated December 22, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was returned unclaimed. A citation dated January 30, 2012 was sent to the licensed premises by certified mail, return receipt requested. There is no information with regard to the status of that mailing. That citation was sent by certified mail on April 12, 2012 and was signed as received on April 16, 2012. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises by certified mail, return receipt requested notifying Licensee of the June 14, 2012 hearing. The notice was signed as received on April 21, 2012 (N.T. 8-12 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises after receiving a complaint on November 29, 2011 (N.T. 5-6).

3. On Wednesday, December 15, 2011, the officer contacted the Pennsylvania Liquor Control Board and spoke with a representative who informed him that the license had expired on October 31, 2011 and that the premises had not renewed it. Subsequently, the officer requested certification from the Pennsylvania Liquor Control Board. A search of the Board's records shows that the license expired October 31, 2011 and that the Licensee did not possess a valid or temporary authority to operate on December 7, 2011 (N.T. 6-8, 12-13 and Exhibit B-3).

4. On Wednesday, December 7, 2011 at approximately 5:00 p.m., the officer, accompanied by a second officer from the Bureau, entered the licensed premises. The officers approached the bar and found a female bartender rendering service to approximately ten people (N.T. 6).

5. The officer requested a Coors Lite Beer. The bartender retrieved the beer from the cooler and informed the officer that the price was \$3.00. The officer gave her \$10.00 and she returned his change after placing the monies paid for the beer into a working cash register (N.T. 6-7).

6. The officer then identified himself and identified the other officer and requested to speak with the manager or owner of the premises. The bartender contacted a Mr. Bradley, via telephone. Mr. Bradley indicated that he was in fact the owner of the premises (N.T. 7).

7. The officer explained to him that the license had expired and that it currently had not been renewed. Mr. Bradley explained that he believed his accountant sent the paperwork to renew it (N.T. 7).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On December 7, 2011, Licensee, by its servants, agents or employees, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2011 and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since November 17, 2006, and has a record of prior violations as follows:

In Re:

Citation No. 07-2320. \$300.00 fine.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.  
September 4, 2007.

Citation No. 11-1367. \$500.00 fine.

1. Sales to a minor.  
March 17 and 18, 2011.
2. Refused an authorized employee of the Enforcement Bureau access to records covering the operation of the licensed business when the request was made during business hours.  
May 24, 2011.
3. Failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.  
June 22, 2011.

DISCUSSION:

Licensee sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2011. At the time it had not been renewed nor validated nor did Licensee have temporary authority to operate. The Licensee did not appear to offer any further explanation as to its failure to renew.

E & J Enterprises, LLC  
In Re: Citation No. 12-0092

Under the circumstances, a \$1,200.00 penalty shall be imposed.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

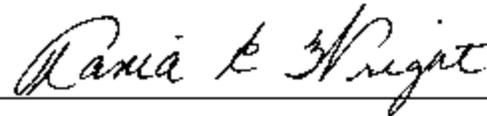
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, E & J Enterprises, LLC, License Number R-AP-SS-7922, pay a fine of One Thousand Two Hundred Dollars (\$1,200.00) 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.

**Jurisdiction of this matter is retained.**

Dated this 20<sup>TH</sup> 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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E & J Enterprises, LLC  
In Re: Citation No. 12-0092

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.** 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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