

Mailing Date: SEP 20 2012

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT (BLCE)	:	In Re Citation No.: 12-0164
	:	
	:	BLCE Incident No.: W03-437712
v.	:	
	:	
MIDTOWN PIZZA OF MIDDLETOWN, INC. 442 E. MAIN ST. MIDDLETOWN, PA 17057-2725	:	PLCB LID No.: 47363
	:	
	:	PLCB License No.: R-AP-SS-EHF-17600

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

FOR LICENSEE: James M. Petrascu, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on February 9, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Midtown Pizza of Middletown, Inc. (Licensee).

The citation charges Licensee with a violation of Section 5.23(a) of the Liquor Control Board Regulations [40 Pa. Code §5.23(a)]. The charge is that Licensee, by your servants, agents, or employees, failed to appoint a Board-approved full-time manager for the licensed premises, during the period August 3 through December 14, 2011.

I presided at an evidentiary hearing on July 23, 2012 at the Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

The matter was submitted by way of agreement of facts. Licensee agreed the Bureau complied with the applicable and investigatory requirements of the Liquor Code.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on October 14, 2011 and completed it on January 3, 2012. (N.T. 5)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on January 27, 2012. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 4)

3. During the period charged Licensee failed to notify the Pennsylvania Liquor Control Board of a change in Manager. (N.T. 10)

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 March 1, 2001, and has the following Adjudication history:

In Re Citation No.: 04-1314. Fine \$150.00.
Issued worthless checks in payment for malt or brewed
beverages dated May 24, 2004.

In Re Citation No.: 05-1069X. Fine \$200.00.
Issued worthless checks in payment for malt or brewed beverages dated March 14, 2005.

In Re Citation No.: 07-2954X. Fine \$250.00.
Issued worthless checks in payment for malt or brewed beverages dated October 2 and 9, 2007.

In Re Citation No.: 09-2952X. Fine \$150.00.
Issued worthless checks in payment for malt or brewed beverages dated October 9 and 13, 2009.

In Re Citation No.: 11-1650C. Fine \$1,750.00 and RAMP training mandated.

1. Sales to a minor on July 28, 2011.
2. Refilled liquor bottles on August 1, 2011.
3. Failed to appoint a Board-approved full-time manager for the licensed premises during the period January 1 through August 2, 2011.

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 violations found herein.

Discretionary Component(s)

The Bureau recommends a \$350.00 fine based on the theory of progressive discipline. While I agree with the principle, it is ineffective in this case because the prior Adjudication was mailed after the events in controversy. Accordingly, I impose a \$250.00 fine.

ORDER:

In Re Citation No.: 12-0164; Licensee, Midtown Pizza of Middletown, Inc.;
PLCB LID No.: 47363; PLCB License No.: R-AP-SS-EHF-17600

Imposition of Fine

Licensee must pay a \$250.00 fine within twenty 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.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 13TH day of September, 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. 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.** 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