

Mailing Date: MAY 02 2013

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 12-0169
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-424840
v.	:	
	:	
JHC OF YORK, INC.	:	PLCB LID No.: 53065
T/A JAMIE'S COURTSIDE	:	
18 S. BELMONT ST.	:	
YORK, PA 17403-1915	:	PLCB License No.: R-AP-SS-18786

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Harry E. Craley, Secretary, Treasurer, Stockholder, and Manager

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on July 20, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against JHC of York, Inc. (Licensee).

The citation charges Licensee with violations of Section 404¹ of the Liquor Code [47 P.S. §4-404]. The charge is that Licensee, by your servants, agents, or employees, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license, on July 22, 23, August 6, September 5 and October 1, 2011.

¹ The reference to Liquor Code Section 404 is incorrect. The renewal CLA in question is based upon Liquor Code Section 470.

I presided at an evidentiary hearing on February 27, 2013 at the Brandywine Plaza, 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 January 13, 2011 and completed it on January 11, 2012. (N.T. 12)

2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on January 27, 2012. The notice alleged the violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)

3. Licensee entered into a renewal Conditional Licensing Agreement (CLA) with the Pennsylvania Liquor Control Board (PLCB), effective May 6, 2011, for the two years renewal periods ending February 28, 2010 and February 29, 2012.² (N.T. 20, Commonwealth Exhibit No. C-3)

July 22, 2011

4. A Bureau Enforcement Officer entered the premises at 10:25 p.m. in an undercover capacity. There was no one at the door checking identification. The Officer purchased alcoholic beverages without question. (N.T. 32-36)

July 23, 2011

5. A Bureau Enforcement Officer entered the premises at 11:35 p.m. in an undercover capacity. There was no one at the door checking identification. The Officer purchased alcoholic beverages without question. (N.T. 37-39)

August 6, 2011

6. A Bureau Enforcement Officer entered the premises at 11:40 p.m. in an undercover capacity. There was no one at the door checking identification. The Officer purchased alcoholic beverages without question. (N.T. 40-42)

² Although Paragraph 2 of the CLA could have been drafted with more precision, I conclude that Paragraph manifests the parties' intention for the renewal CLA to apply to two successive renewal cycles.

October 1, 2011

7. A Bureau Enforcement Officer entered the premises at 8:50 p.m. in an undercover capacity. There was no one at the door checking identification. The Officer purchased alcoholic beverages without question. (N.T. 51-53)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau provided no evidence to support the alleged violation of September 5, 2011.
3. Because Licensee failed to use a transaction scan device on patrons purchasing alcoholic beverages, Licensee violated Paragraph 11.b.³

PRIOR RECORD:

Licensee has been licensed since June 17, 2004, and has the following Adjudication history:

In Re Citation No.: 05-2445. Fine \$500.00.

1. Discounted the price of alcoholic beverages in excess of 2 hours in a business day on September 14, 21, 2005, and divers other occasions between September 1 and October 27, 2005.
2. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m. on September 22, 2005, and divers other occasions between September 1 and October 27, 2005.

In Re Citation No.: 07-1581. Fine \$1,750.00 and RAMP training mandated.

1. Sales to minors on March 4 and May 13, 2007.
2. Used loudspeakers or devices whereby music could be heard outside on March 24, April 7, May 12 and 13, 2007.

³ Licensee's argument for dismissal, sounding in estoppel, cannot apply because these violations occurred during the renewal CLA's effective term.

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)

I impose a \$350.00 fine.

ORDER:

In Re Citation No.: 12-0169; Licensee, JHC of York, Inc.; PLCB LID No.: 53065;
PLCB License No.: R-AP-SS-18786

Imposition of Fine

Licensee must pay a \$350.00 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 25TH day of April, 2013.



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