

Mailing Date: DEC 10 2012

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

PENNSYLVANIA STATE : In re Citation No. 12-0237
POLICE, BUREAU OF :
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W01-440947
 :
v. : PLCB LID No. 56713
 :
7681 SMOKEEATERS INC : PLCB License No. R-SS-9122
7681 FRANKFORD AVE :
PHILADELPHIA PA 19136-3634 :

JUDGE SHENKLE
BLCE COUNSEL: Erik Shmukler, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 21, 2012. The citation alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, on January 3, 2012, by operating the licensed premises without a valid health permit or license, which expired on April 30, 2011.

At the hearing scheduled for October 23, 2012, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period December 29, 2011 through January 25, 2012, and sent it written notice of the results on January 27, 2012 (N.T. 7-8, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on February 21, 2012 (N.T. 7-8, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on August 31, 2012.
4. On January 3, 2012, a liquor enforcement officer entered the licensed premises in an undercover capacity and purchased a bottle of beer. He then identified himself to the bartender and asked to see a valid liquor license and a valid health permit, as both of the documents posted had

expired. Licensee's owner had obtained temporary authority from the Board to operate, but the health permit expired on April 30, 2011, and had not been renewed as of January 3, 2012 (N.T. 5-9)

5. Licensee paid the fees for the 2012 and 2013 permit years on April 30, 2012 (Ex. B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since September 29, 2006, and has had five prior violations:

In re Citation No. 07-1696X. \$500.00 fine. License suspended 1 day for late payment.

1. Bad checks for malt or brewed beverages. April 13 and 26, 2007.

In re Citation No. 07-2071. \$150.00 fine. License suspended 1 day for late payment.

1. Loudspeakers could be heard outside. July 28, 2007.

In re Citation No. 08-2382. \$300.00 fine.

1. Sold, furnished or gave liquor for consumption off premises. July 17, 2008.

In re Citation No. 10-0609. \$600.00 fine. License suspended 1 day for late payment.

1. Loudspeakers could be heard outside. February 12, 13 and 28, 2010.

In re Citation No. 11-0461. \$1,000.00 fine.

1. Sales after license expired. February 23, 2011.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 7681 Smokeeaters, Inc., License No. R-SS-9122, shall pay a fine of three hundred dollars (\$300.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 5TH day of DECEMBER, 2012.



David L. Shenkle, J.

jb

NOTICE: 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.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

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. Please make your 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