

Mailing Date: SEP 10 2012

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

PENNSYLVANIA STATE	:	In re Citation No. 12-0387
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-437788
	:	
v.	:	PLCB LID No. 51315
	:	
THREE BEARS LLC	:	PLCB License No. R-AP-SS-7602
1512 SHUNK ST	:	
PHILADELPHIA PA 19145-4637	:	

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 13, 2012. The citation alleges that Licensee violated §§491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), on December 3, 2011, by selling alcoholic beverages after its Restaurant Liquor License expired on October 31, 2011, and had not been renewed and/or validated.

At the hearing scheduled for August 2, 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 October 14, 2011, through January 13, 2012, and sent it written notice of the results on February 9, 2012 (N.T. 8-9, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on March 13, 2012 (N.T. 8-9, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on June 13, 2012.
4. On Saturday, December 3, 2011, a liquor control enforcement officer entered the licensed premises at about 11:30 p.m. and saw about 20 patrons in possession of alcoholic beverages, attended by two bartenders. The officer purchased beer (N.T. 6).
5. This license had expired on October 31, 2011, and Licensee did not have authority to dispense alcoholic beverages on December 3, 2011 (Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since July 23, 2003, and has had prior violations as follows:

In re Citation No. 05-0935. \$100.00 fine.

1. Operated without a valid health permit.

In re Citation No. 11-0511. \$1,250.00 fine.

1. Sales after license expired. March 2, 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 \$1,000.00 to \$5,000.00 range, or both, for violations of this type.

This case is a repeat of the incident of March 2, 2011, in which Licensee's member told the investigating officer that "his accountant had taken care of the paperwork and that everything was up to date," although he could not produce a current liquor license.

In this case Licensee's member did not appear at the hearing scheduled for August 2, 2012, but submitted a hand-written statement on a form used for prehearing memoranda. This statement does not count as evidence; if Licensee had wanted to make a plea for leniency the time to do it was at the scheduled hearing. Alternatively, if Licensee had waived the hearing (as it did before, regarding Citation No. 11-0511) I would have considered a written statement in mitigation.

If Licensee's member has difficulty reading the English language, he should get help from someone with better reading skills, because all of this company's problems so far have come from a failure to read and pay attention to important documents.

A liquor license, for example, is an important document. It clearly states on the front the date when it expires. When the license is properly hanging on the wall and the expiration date is still in the future, it is lawful for a licensee to dispense alcoholic beverages during permitted hours. When that expiration date is in the past, Licensee's member and manager must have some other written authority from the Pennsylvania Liquor Control Board or else they are committing an offense for which they could be arrested and sentenced to a term of imprisonment.

This is the same problem Licensee faced in 2005, when the premises was found to be open on a number of dates although the health permit had expired.

These problems will continue to worsen if Licensee's member continues to misread or misunderstand the nature of the significant documents which must be current to engage in this closely regulated business.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Three Bears, LLC, License No. R-AP-SS-7602, shall pay a fine of one thousand five hundred dollars (\$1,500.00) 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 28TH day of AUGUST, 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