

Mailing Date: SEP 27 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-0458
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-441064
	:	
2401 K&K LOUNGE INC.	:	
2401 RIDGE AVE.	:	PLCB LID - 59449
PHILADELPHIA PA 19121-3003	:	
	:	
	:	PLCB License No. R-AP-SS-11128
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 20, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 2401 K & K Lounge, Inc., License Number R-AP-SS-11128 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, August 7, 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 January 19 and 20, 2012, 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 December 29, 2011 and ended on ended February 22, 2012. A notice of violation letter dated February 28, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on March 1, 2012. A citation dated March 20, 2012 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on March 22, 2012. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on June 18, 2012 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received on June 25, 2012 (N.T. 8-9 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement who is a twenty-one year veteran of the Bureau conducted an investigation of the licensed premises. On Thursday, January 19, 2012 at 1:00 a.m., the officer proceeded to the licensed premises. Once entering, she observed a female bartender rendering service of alcoholic beverages to five patrons. The officer, in her undercover capacity, ordered one Smirnoff pineapple malt beverage paying \$3.60. The officer departed the premises at 1:05 a.m. (N.T. 5-6).

3. Later in the day on January 19, 2012, the officer accessed the PLCB computer system and ascertained that the Licensee's license was inactive and that it had expired on October 31, 2011. The officer received an Attestation from the Bureau of Enforcement indicating that a search of the Board records states that the license expired October 31, 2011 and the Licensee did not possess a valid license nor had temporary authority to operate on January 19, 2012 or January 20, 2012 (N.T. 7-9 and Exhibit B-3).

4. On Friday, January 20, 2012 at 8:20 p.m., the officer went to the licensed premises. The bartender, identified as Martha Middleton, was rendering service to three patrons. The officer, again in her undercover capacity, purchased a Smirnoff pineapple beverage paying \$2.75 (N.T. 7).

5. The officer then identified herself to the bartender and asked her to present her with a current valid liquor license. She was not able to do so and called Mimi Tate, the person who was allegedly in charge. Mimi Tate arrived at the licensed premises, but she was also unable to produce a current valid liquor license or temporary authority to operate (N.T. 7).

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CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On January 19 and 20, 2012, 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, 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 September 16, 2008, and has no record of prior violations.

DISCUSSION:

The Licensee sold liquor and/or malt beverages after the Restaurant Liquor License had expired on October 31, 2011 and had not been renewed or validated. On January 19, 2012 and January 20, 2012, the Licensee had no authority to sell alcoholic beverages.

The official record of history of prior violations indicates this Licensee has no prior record. Under the circumstances, a moderate monetary 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, 2401 K&K Lounge, Inc., License Number R-AP-SS-11128, pay a fine of One Thousand One Hundred Dollars (\$1,100.00) 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.

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Jurisdiction of this matter is retained.

Dated this 21ST 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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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, 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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