

Mailing Date: DEC 04 2012

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

PENNSYLVANIA STATE : In re Citation No. 12-0517
POLICE, BUREAU OF :
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W01-441367
 :
v. : PLCB LID No. 59488
 :
BAR BLUE II LLC : PLCB License No. R-AP-SS-16033
142 E MARKET ST :
WEST CHESTER PA 19382-3153 :

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 April 3, 2012. The citation alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, during the period November 30, 2011, through March 5, 2012, by failing to adhere to the conditions of an agreement with the Board placing additional restrictions on the license.

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 January 6 through March 5, 2012, and sent it written notice of the results on March 15, 2012 (N.T. 10, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on April 3, 2012 (N.T. 10-11, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on August 31, 2012.
4. A Conditional Licensing Agreement between the Board and Licensee dated August 8, 2008, provides among other things that the Licensee shall “within ninety (90) days of the approval of the underlying application, become compliant with and remain compliant with the responsible alcohol management provisions [R.A.M.P.] of the Liquor Code . . .” (Exhibit B-3).

5. Board records show that Licensee first became R.A.M.P. – certified on April 24, 2009, and not again until March 29, 2012.

6. When a liquor enforcement officer informed Licensee’s manager of the lapse in R.A.M.P. – certification, he responded through an attorney that he was not aware that R.A.M.P. – certification expired (N.T. 6)

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The Liquor Code provides in §471.1(f), 47 P.S. §4-471.1(f) that:

(f) Upon completion of a certified alcohol service personnel program or the board’s owner/manager training program, the participant will be certified by the training entity or the board as having successfully completed the program. Said certification will be valid for two years. The licensee shall keep records of the certification status of its employes (*sic*), managers and owners, including the name of the employe (*sic*), manager or owner and the date of that individual’s certification, in the same manner as it keeps other business records pursuant to section 493(12). The licensee shall also keep records of its new employe (*sic*) orientation program and records of its responsible alcohol service signage as set forth by the board by regulation. (Emphasis added).

The idea that R.A.M.P. – certification expires after two years is based on this provision. It is understandable that Licensee’s manager may have missed the significance of the portion of the statute underlined above, because it seems to refer to the completion of the program by individuals, not the certification of the premises employing them.

However, Licensee’s first R.A.M.P. – certification should have left Licensee’s manager with the understanding that the provision has been construed to apply to a licensee’s R.A.M.P. – certification as well as to an individual’s.

PRIOR RECORD:

Licensee has been licensed since August 7, 2008, and has had one prior violation:

In re Citation No. 09-2084. \$100.00 fine.

1. Noncompliance with conditional licensing agreement. May 29, August 2 and 6, 2009.

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, Bar Blue II, LLC, License No. R-AP-SS-16033, shall pay a fine of two hundred dollars (\$200.00) 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 29TH day of NOVEMBER, 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