

Mailing Date: NOV 14 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 12-0596
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-420113
v.	:	
	:	
THE UNITED CITIZENS CLUB OF	:	PLCB LID No.: 2119
NANTICOKE PENNSYLVANIA	:	
109-111 PINE ST.	:	
NANTICOKE, PA 18634-4431	:	PLCB License No.: C-4637

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing three counts, that was issued on April 11, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The United Citizens Club of Nanticoke Pennsylvania (Licensee).

The first count charges Licensee with a violation of Section 493(28) of the Liquor Code [47 P.S. §4-493(28)]. The charge is that, your club president, consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages, on October 1, 2011.

The second count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that Licensee, by your servants, agents, or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron, on October 1, 2011.

The third count charges Licensee with a violation of Section 474.1(a) of the Liquor Code [47 P.S. §4-474.1(a)] and Section 7.31(a) of the Liquor Control Board Regulations [40 Pa. Code §7.31(a)]. The charge is that Licensee, by your servants, agents, or employees, failed to return your club license and wholesale liquor purchase permit cards to the Board after your licensed establishment had not been in operation for a period of fifteen (15) consecutive days between February 6 and 22, 2012.

I presided at an evidentiary hearing on September 28, 2012 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Office of Administrative Law Judge sent a notice of hearing on August 7, 2012, by certified mail, return receipt requested. The notice was returned unclaimed. (N.T. 4-5)
2. The Bureau began its investigation on September 30, 2010 and completed it on March 15, 2012. (N.T. 6)
3. During the course of the investigation, Bureau Enforcement Officers visited the premises on more than thirty occasions. On more than two-thirds of those visits, the premises was closed. When the premises was open, either the President and/or the same bartender was present. (N.T. 30-48)
4. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on March 27, 2012. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count No. 1

5. A Bureau Enforcement Officer entered the premises in an undercover capacity at approximately 10:15 p.m., on October 1, 2011. Licensee's President was seated at the bar. The President was drinking alcoholic beverages which the barmaid served him. The President went behind the bar. He served alcoholic beverages. (N.T. 9-18)

Count No. 2

6. When the Officer entered, he noticed a patron seated at the bar drinking beer. At one point, the customer remarked that she wished the restroom was closer because she was too drunk to walk. When she attempted to walk, she was unsteady. Her eyes were bloodshot. While in this condition, the President served her beer. (N.T. 18-26)

Count No. 3

7. The license was not placed in safekeeping. A Bureau Enforcement Officer visited the premises on seventeen consecutive days beginning February 6, 2012. At various times during each day, the premises was closed. On the first several days, the Officer attempted to gain entry by knocking on the door but there was no response. (N.T. 51-60)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count Nos. 1 through 3

2. I sustain the violations as charged.

PRIOR RECORD:

Licensee has been licensed since April 1, 1947, and has had one prior Adjudication since July 1, 1987, the date the Office of Administrative Law Judge was established.

In Re Citation No.: 11-0931. Fine \$250.00.

Used loudspeakers or devices whereby the sound of music could be heard outside on May 7, 2011.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Count Nos. 1 and 3

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.

Count No. 2

Liquor Code Section 471 [47 P.S. §4-471] prescribes a penalty of license suspension, or revocation, or a fine of not less than \$1,000.00, or more than \$5,000.00, or both for the violation found herein.

Further, Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to responsible alcohol management, mandates that Licensee participate in the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program (RAMP), since this is Licensee's first violation as herein found.

Discretionary Component(s)

There is every indication that Licensee is no longer a viable club. Therefore, I revoke the license.

ORDER:

In Re Citation No.: 12-0596; Licensee, The United Citizens Club of Nanticoke Pennsylvania; PLCB LID No.: 2119; PLCB License No.: C-4637

Imposition of Revocation

Count Nos. 1 through 3 merged

I revoke the license and any permit or other authority issued by the Pennsylvania Liquor Control Board attendant to the license, effective, Monday, December 24, 2012.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 9TH day of November, 2012.



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.