

Mailing Date: APR 19 2013

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No. 12-0613
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-442362
	:	
DIPAL CORPORATION	:	
T/A GABBY'S	:	PLCB LID No. 57455
2440 W. PIKE ST., STE. 2	:	
CHARTIERS TWP.	:	PLCB License No.: R-AP-SS-20101
HOUSTON, PA 15342-1161	:	
	:	
	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily L. Gustave, Esquire

LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 13, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Dipal Corporation, t/a Gabby's, License Number R-AP-SS-20101 (hereinafter Licensee).

The first count charges Licensee with a violation of Section 102 of the Liquor Code, [47 P.S. §1-102] in that on February 23, 2012, its licensed premises was not a bona fide restaurant in that it, by its servants, agents or employees, maintained insufficient food items, eating utensils and dishes.

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The second count charges Licensee with a violation of Section 471(d) of the Liquor Code, [47 P.S. §4-471(d)] in that during the period December 26, 2011 through February 23, 2012, it failed to comply with the order of the Administrative Law Judge at Citation No. 110679C mandating responsible alcohol management training.

The third count charges Licensee with a violation of Section 493(12) and 471.1(f) of the Liquor Code, [47 P.S. §§4-493(12) and 471.1(f)] in that Licensee, by its servants agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding February 23, 2012.

An Administrative hearing was conducted on March 20, 2013 at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily L. Gustave, Esquire. The hearing was held ex parte.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on January 31, 2012, and completed its investigation on March 22, 2012. (N.T. 7, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated March 30, 2012, which was sent by certified mail and was received March 31, 2012. (N. T. 7, 8 Exhibit C-2)
3. This citation was issued on April 13, 2012, and was sent by certified mail, and was received on April 16, 2012. (N. T. 7, 8 Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on January 25, 2013 by first class mail as well as certified mail. (Official Notice)
5. The aforementioned mailing of the notice of hearing was sent by certified mail and was not returned. (Official Notice)

COUNT ONE

6. On February 23, 2012 at 7:00 p.m., a Liquor Enforcement Officer entered Licensee's premises and identified himself to a female bartender who was rendering service to 12 patrons. The Enforcement Officer advised the bartender that he was present to conduct a routine inspection at which time Manager Sujay Patel (bar manager and son of

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Licensee's Corporate Officer Pravin Patel) was notified. Several minutes later, Sujay Patel arrived at the premises. (N. T. 10, 11)

7. Upon inquiry, Mr. Patel advised the Enforcement Officer that the premises does not have a kitchen and meals are not prepared for patrons. Only potato chips and pretzels are available. (N. T. 11, 12)

COUNTS TWO AND THREE

8. In an order dated September 26, 2011 at Citation No. 11-0679C, this Court ordered that Licensee complete R.A.M.P. training and become certified on or before December 25, 2011. (N. T. 8, 9)
9. Mr. Patel stated that current bartenders and managers are recent hires and did not complete R.A.M.P. training. Mr. Patel also stated that his father, Mr. Pravin Patel, is president of the corporation and completed manager training on February 18, 2012. Licensee failed to provide any documentation for R.A.M.P. training. (N. T. 12, 13)
10. The Enforcement Officer observed that no R.A.M.P. signage was posted on the premises. (N. T. 13, 14)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations in Counts one, two and three as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

CONCLUSION OF LAW:

1. The notice requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4471] have been satisfied.
2. On February 23, 2012, your licensed premises was not a bona fide restaurant in that you, by your servants, agents or employees, maintained insufficient food items, eating utensils and dishes, in violation of Section 102 of the Liquor Code, [47 P.S. §1-102].

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3. During the period December 26, 2011 through February 23, 2012, Licensee failed to comply with the order of the Administrative Law Judge at Citation No. 11-0679C mandating responsible alcohol management training, in violation of Section 471(d) of the Liquor Code, [47 P.S. §4-471(d)].
4. Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding February 23, 2012, in violation of Sections 493(12) and 471.1(f) of the Liquor Code, [47 P.S. §§4-493(12) and 471.1(f)].

PRIOR RECORD:

Licensee has been licensed since January 8, 2007, and has had three prior violations.

IN RE:

Citation No. 09-0471. Fine \$850.00.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (machines).
August 27, September 15, December 9, 10 and 11, 2008.

Citation No. 11-0679C. Fine \$1,450.00 and R.A.M.P. training mandated.

1. Sales to a minor.
February 17, 2011.
2. Smoked and/or permitted smoking in a public place where smoking was prohibited.
February 17, 2011.

Citation No. 11-1948C. Fine \$1,800.00, 1 day suspension and R.A.M.P. training mandated. Fine not paid and license suspended one additional day and thereafter until fine paid.

- Sales to a minor.
October 6, 2011.

PENALTY:

Relative to Counts one, two and three of this citation, Section 471 of the Liquor Code [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 violations of the types found in this case.

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The record discloses that Licensee received R.A.M.P. certification on April 9, 2012.

Licensee's failure to submit a pre-hearing memorandum and failure to appear at the Administrative hearing demonstrates a clear lack of interest in this liquor license.

For the foregoing reasons, the following penalties shall be imposed. Count one - \$300.00 and a suspension for the period of at least one day and shall continue thereafter until Licensee's provides a certification that it operates its licensed establishment as a bona fide restaurant in conformity with the provisions of Section 102 of the Liquor Code, ; Count two - \$300.00, and Count three - \$150.00.

ORDER:

THEREFORE, it is hereby ordered that Dipal Corporation, t/a Gabby's, License Number R-AP-SS-20101, pay a fine of \$750.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee's liquor license (including all permits and Licensee Discount Card), License No. be suspended for a period of one day **BEGINNING** at 7:00 a.m. on Friday, May 24, 2013 AND continuing thereafter until Licensee provides a certification that it operates as a bona fide restaurant.

Licensee is directed on Friday, May 24, 2013 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

This suspension is to be served consecutively with the suspension imposed at Citation No. 12-0888.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

LICENSEE MAY NOT RESUME OPERATION OF THE LICENSED PREMISES UNTIL FURTHER ORDER BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE.

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Jurisdiction is retained to ensure compliance with this Order.

Dated this 15TH day of APRIL, 2013.



Roderick Frisk, J clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 CHIEF COUNSEL'S OFFICE AT 717-783-9454.

Detach Here and Return Stub with Payment

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** 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

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