

Mailing Date: JUN 26 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. 12-0825
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-442589
	:	
LA TAMBORA CAFÉ	:	
RESTAURANT INC.	:	PLCB LID - 61439
738-740 ADAMS AVE.	:	
PHILADELPHIA PA 19124-2318	:	
	:	PLCB License No. R-AP-SS-EHF-6312
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

La Tambora Café Restaurant, Inc.

In Re: Citation No. 12-0825

This proceeding arises out of a citation that was issued on May 29, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against La Tambora Café Restaurant, Inc., License Number R-AP-SS-EHF-6312 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, November 15, 2012, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), in that on March 31, 2012, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises concerning loudspeakers, after hour sales and disorderly operations (N.T. 6-7).

2. The officer's first visit to the premises was February 19, 2012, and his second on March 31, 2012 (N.T. 7).

3. On March 31, 2012, the officer arrived at the premises at 1:45 a.m. and observed a Hispanic male doorman checking identification and padding patrons down for weapons. Once inside the officer noted that there were approximately sixteen patrons with two Hispanic female bartenders and one Hispanic male bartender (N.T. 8).

4. The officer ordered an alcoholic beverage from a female bartender at approximately 2:12 a.m. The officer ordered a twelve ounce bottle of Coors Light beer. The officer could not understand her English and the music was very loud; however, he did note that she said something with regard to it being after 2:00 a.m. She did, however, look up at a digital clock directly behind the officer. The officer indicated 1412 hours, that is to say 2:12 a.m. (N.T. 9).

5. Despite the fact that the clock said 2:12 a.m., the bartender reached for a Coors Light and charged the officer four dollars for it. The officer verified the time by his iPhone (N.T. 910).

6. After giving the bartender a five dollar bill in exchange for the Coors Light, the bartender put it in the cash register. The officer received a dollar in change (N.T. 10).

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7. Approximately one minute later, that is to say 2:13 a.m., three Hispanic males walked in and ordered Corona and Heineken beers in exchange for currency (N.T. 10).

8. The officer departed the premises at 2:20 a.m. When the officers departed the premises, there were five patrons remaining. The officers went outside to a large parking lot and observed the five patrons also leave the premises (N.T. 11).

9. On April 28, 2012, the officer again went to the licensed premises but found no violations (N.T. 11-12 and 14).

CONCLUSIONS OF LAW:

On March 31, 2012, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since November 18, 2009, and has no record of prior violations.

DISCUSSION:

The Licensee sold alcoholic beverages to an undercover Liquor Enforcement Agent between the hours of 2:00 a.m. and 7:00 a.m. (2:12 a.m.) on March 31, 2012. The bartender was fully aware of the time in that with some reluctance and no more than a request from the officer, she sold him the alcoholic beverages after looking at the clock and seeing that it was after 2:00 a.m. The officer also verified the time by way of the clock and by way of his own cellular phone.

Under the circumstances, a suspension 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 the Restaurant Liquor License of La Tambora

La Tambora Café Restaurant, Inc.

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Café Restaurant, Inc., License Number R-AP-SS-EHF-6312 (including all permits and Licensee Discount Card), be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, September 30, 2013 and **ENDING** at 7:00 a.m. on Wednesday, October 2, 2013.

Licensee is directed on Monday, September 30, 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.

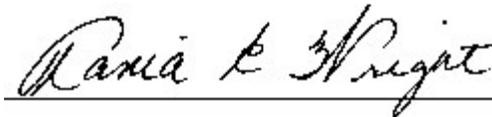
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

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

The Licensee is authorized on Wednesday, October 2, 2013 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction of this matter is retained.

Dated this 21ST day of JUNE, 2013.



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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