

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. 12-0888
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-444727
	:	
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:** Michael C. Nickles, Esquire  
**LICENSEE COUNSEL:** No Appearance

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on June 11, 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 citation charges Licensee with violation of Section 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 May 8, 2012, Licensee, by its

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servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when its restaurant liquor license was suspended at Citation No. 11-1948C.

An administrative hearing was conducted on March 20, 2013, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael C. Nickles, 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 March 29, 2012, and completed its investigation on May 9, 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 May 22, 2012, which was sent by certified mail and was received May 24, 2012. (N. T. 7, Exhibit C-2)
3. This citation was issued on June 11, 2012, and was sent by certified mail, and was received on June 13, 2012. (N. T. 7, 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)
6. In a Supplemental Order dated March 28, 2012, at Citation No. 11-1948C, this Court ordered Licensee's restaurant liquor license suspended for at least one day commencing at 7:00 a.m. on Monday, May 7, 2012 and continuing thereafter until Licensee paid the \$1,800.00 fine imposed in the original adjudication dated February 8, 2012. (Official Notice)
7. On May 9, 2012, this Court received payment of Licensee's \$1,800.00 fine. Accordingly, in a Second Supplemental Order dated May 9, 2012 at Citation No. 111948C, Licensee was authorized to resume its operations pursuant to its restaurant liquor license commencing at 5:00 p.m., on May 9, 2012. (N. T. 12, 13 Official Notice)

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8. On May 8, 2012 at 3:20 p.m., a Liquor Enforcement Officer entered Licensee's premises in an undercover capacity and observed a bartender rendering service to approximately 14 patrons. (N. T. 10)
9. During the course of this visit, the Enforcement Officer purchased a 12-ounce bottle of Coors Light beer from the bartender and observed other patrons purchasing alcoholic beverages. (N. T. 10)
10. The Enforcement Officer then identified himself to Sujay Patel (bar manager and son of Licensee's Corporate Officer Pravin Patel) and advised him that a suspension of the liquor license was in effect because the fine imposed at Citation No. 11-1948C was never paid. Mr. Patel stated that he misinterpreted the Supplemental Order he received and thought he was just to be suspended on May 7, 2012 and he could pay the fine at a later date. (N. T. 10, 11)
11. Mr. Patel advised the bartender to stop serving alcoholic beverages and asked the patrons to leave. (N. T. 11)
12. The Enforcement Officer departed Licensee's premises at 3:30 p.m. (N. T. 11)
13. Later that same day, another Enforcement Officer arrived at Licensee's premises at 6:30 p.m. and observed the premises closed and a suspension placard posted. (N. T. 11)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation 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).

CONCLUSIONS OF LAW:

1. The notice requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4471] have been satisfied.

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2. On May 8, 2012, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when its restaurant liquor license was suspended at Citation No. 11-1948C, in violation of Section 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 January 8, 2007, and has had three 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:

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

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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, a penalty shall be imposed in the amount of \$1,800.00 and a suspension of one day.

ORDER:

THEREFORE, it is hereby ordered that Dipal Corporation, t/a Gabby's, License Number R-AP-SS-20101, pay a fine of \$1,800.00 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. R-AP-SS-20101 be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Thursday, May 23, 2013 and **ENDING** at 7:00 a.m. on Friday, May 24, 2013.

Licensee is directed on Thursday, May 23, 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. 12-0613.**

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 is authorized on Friday, May 24, 2013 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 15<sup>TH</sup> day of APRIL, 2013.

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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

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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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