

Mailing Date: MAY 17 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 12-0949
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-445183
	:	
BENDER'S PIT STOP, INC.	:	
67 CONNELLSVILLE ST.	:	PLCB LID No.: 45996
UNIONTOWN, PA 15401-3871	:	
	:	PLCB License No.: R-AP-SS-12742
	:	
	:	
	:	
	:	
	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Nadia L. Vargo, Esquire
LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 25, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Bender's Pit Stop, Inc., License Number R-AP-SS-12742 (hereinafter Licensee).

The citation charges Licensee with a violation of Section 468(b.1) of the Liquor Code, [47 P.S. §4-468(b.1)] in that during the period August 13, 2010 through May 1, 2012, Licensee, by its servants, agents or employees, failed to notify the Board and/or place license in safekeeping after filing bankruptcy under Chapter 11, U. S. Code.

An administrative hearing was conducted on March 20, 2013, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia L. Vargo, 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 April 9, 2012, and completed its investigation on May 19, 2012. (N. T. 8, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated June 6, 2012, which was sent by certified mail and was received June 7, 2012. (N. T. 8-10, Exhibit C-1, C-2)
3. This citation was issued on June 25, 2012, and was sent by certified mail, and received on June 27, 2012. (N. T. 10-12, 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. On August 13, 2010, Licensee filed for Chapter 11 Bankruptcy, in the U.S. Bankruptcy Court, Western District of Pennsylvania at Petition #10-25813-CMB. On January 26, 2011, Licensee's Bankruptcy was converted to Chapter 7. These proceedings were terminated on March 26, 2012. (N. T. 13, 14)
7. On April 24, 2012, the Enforcement Officer arrived at Licensee's premises and met with Pamela Bendishaw to discuss the bankruptcy and the operation of the premises. Ms. Bendishaw advised the Enforcement Officer that Licensee's premises was engaging in the sale of food and alcoholic beverages since filing for bankruptcy between August 13, 2010 and February 13, 2011. (N. T. 20, 21)
8. Licensee failed to notify the Board that it filed for Bankruptcy on August 13, 2010.(N. T. 21, 22)
9. During the period August 13, 2010 through May 1, 2012, Licensee's failed to return its restaurant liquor license and Wholesale Purchase Permit Card for safekeeping. (N. T. 15, Exhibits C-6)

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. §4-471] have been satisfied.

2. During the period August 13, 2010 through May 1, 2012, Licensee, by its servants, agents or employees, failed to notify the Board and/or place license in safekeeping after filing bankruptcy under Chapter 11, U.S. Code, in violation of Section 468(b.1) of the Liquor Code, [47 P.S. §4-468(b.1)].

PRIOR RECORD:

Licensee has been licensed since May 22, 2000, and has had one violation.

IN RE:

Citation No. 10-1965. Four days suspension.

1. Sales after the license expired and had not been renewed and/or validated.
August 19, 2010.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

The record discloses that Licensee's restaurant liquor license is currently inactive.

For the foregoing reasons, a one (1) day suspension of Licensee's restaurant liquor shall be imposed.

Bender's Pit Stop, Inc.
IN RE: Citation No. 12-0949

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of Bender's Pit Stop, Inc. (including all permits and Licensee Discount Card), License No. R-AP-SS-12742 be suspended for a period of one (1) day. However, the suspension period is deferred pending the reactivation of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 8TH day of MAY, 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.