

Mailing Date: JUN 28 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 12-1008
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-446748
	:	
LUNA, INC.	:	
T/A LUNA BAR & GRILL	:	PLCB LID No.: 38553
309 N. CRAIG ST.	:	
PITTSBURGH, PA 15213-1210	:	PLCB License No.: R-AP-SS-626
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	:	
	:	
	:	
	:	

**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 July 18, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Luna, Inc., t/a Luna Bar & Grill, License Number R-AP-SS-626 (hereinafter Licensee).

The citation charges Licensee with a 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 17 and 30, 2012, Licensee, by its servants, agents or employees, sold alcoholic beverages after its restaurant liquor license was revoked on May 17, 2012.

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An administrative hearing was conducted on Tuesday, April 23, 2013, at 11:30 a.m., 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 May 17, 2012, and completed its investigation on June 2, 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 June 18, 2012, which was sent by certified mail and was received June 19, 2012. (N. T. 7-8, 11, Exhibit C-1, C-2)
3. In an amended letter, the Bureau notified Licensee that since the issuance of the prior letter, it has been determined that the violation was incorrect and a corrected letter dated July 2, 2012, was sent by certified mail and was received July 3, 2012. (N. T. 11-12, Exhibit C-3, C-4)
4. This citation was issued on July 18, 2012, was sent by certified mail and was received on July 21, 2012. (N. T. 12, Exhibits C-5, C-6)
5. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on March 1, 2013 by first class mail as well as certified mail. (Official Notice)
6. The aforementioned mailing of the notice of hearing was sent by certified mail and was not returned. (Official Notice)
7. In a Second Supplemental Order dated May 17, 2012 at Citation No. 11-1743C, this Court revoked Licensee's restaurant liquor license effective immediately as a result of its failure to pay its fine. (N. T. 5)
8. On Thursday, May 17, 2012 at 9:30 p.m., a Liquor Enforcement Officer entered Licensee's premises in an undercover capacity and observed a male bartender rendering service of alcoholic beverages to eight patrons. Upon entering, the Enforcement Officer purchased a 12-ounce bottle of Coors Light Beer and a shot of Jagermeister for \$7.25 from the bartender. The Enforcement Officer departed Licensee's premises at 10:14 p.m. with six patrons present. (N. T. 13-14)
9. On Wednesday, May 30, 2012 at 7:25 p.m., three Enforcement Officers entered Licensee's premises in undercover capacities and observed a male bartender rendering

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service of alcoholic beverages to 17 patrons. The Enforcement Officers observed numerous sales of alcoholic beverages to the patronage. An Enforcement Officer then purchased for himself and his fellow officers, two 12-ounce bottles of Miller Lite Beer, a 12-ounce bottle of Coors Light beer and a shot of Jack Daniels Whiskey for a total of \$9.75. (N. T. 15, 20-22)

10. At 7:40 p.m., the Enforcement Officers identified themselves to Licensee's bartender and advised him that Licensee's liquor license was revoked. Licensee's sole corporate officer/manager Gil Sokol appeared at the premises a short time later. The Enforcement Officers advised Mr. Sokol that he was not permitted to engage in the sale, furnishing or giving of alcoholic beverages on the premises due to the revocation of Licensee's restaurant liquor license. As the result of this conversation, Mr. Sokol ordered the departure of all patrons at 7:47 p.m. (N. T. 15-17)
11. The Enforcement Officers departed Licensee's premises at 9:50 p.m. with no patrons remaining. (N. T. 17)

#### 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).

#### CONCLUSION OF LAW:

1. The notice requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On May 17 and 30, 2012, Licensee, by its servants, agents or employees, sold alcoholic beverages after its restaurant liquor license was revoked on May 17, 2012, in violation of Sections 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 August 7, 1996, and has had six violations.

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IN RE:

Citation No. 93-0133. Fine \$350.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 2:30 a.m.

Citation No. 93-2492. Fine \$350.00.

1. Sales to a visibly intoxicated person.

Citation No. 01-1078. Fine \$1,000.00.

1. Sales to minors.

Citation No. 07-0785. Fine \$200.00.

1. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.

Citation No. 08-1612. Fine \$1,500.00 and R.A.M.P. training mandated.

1. Sales to minors.  
June 7, 2008.
2. Minors frequenting.  
June 7, 2008.

Citation No. 11-1743C. Fine \$3,000.00 and R.A.M.P. training mandated. Fine not paid and licenses suspended 1 day and thereafter until fine paid. Fine still not paid and license revoked.

1. Sales to a minor.  
August 26, 2011.
2. Sales after the license expired and had not been renewed and/or validated.  
August 26, 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.

In a Second Supplemental Order dated May 17, 2012, at Citation No. 11-1743C, Licensee's restaurant liquor license was revoked effective immediately.

For the foregoing reasons, Licensee's restaurant liquor license shall be revoked.

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ORDER:

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. R-AP-SS-626, issued to Luna, Inc., t/a Luna Bar & Grill, is **REVOKED** effective immediately. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is inactive, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

Jurisdiction is retained to ensure compliance with this order.

Dated this 21<sup>ST</sup> day of JUNE, 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.**