

Mailing Date: JUL 23 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-1011
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-447081
	:	
100 ALLEGHENY INC.	:	
100-106 W. ALLEGHENY AVE.	:	PLCB LID - 58083
PHILADELPHIA PA 19133-4205	:	
	:	
	:	PLCB License No. R-AP-SS-1381
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 10, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 100 Allegheny, Inc., License Number R-AP-SS-1381 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, November 20, 2012, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Sections 467, 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§§§4-467, 4-491(1), 4-492(2) and 4-493(16) and Section 7.31 of the Liquor Control Board Regulations, 40 Pa. Code §7.31, in that on May 30, 2012, Licensee, by its servants, agents or employes, sold alcoholic beverages during a time when the Restaurant Liquor License was being held in safekeeping by the Pennsylvania Liquor Control Board.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on May 23, 2012 and ended on June 24, 2012. A notice of violation letter dated June 22, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on June 23, 2012. A citation dated July 10, 2012 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on July 12, 2012. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on October 9, 2012 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received (N.T. 11-12 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises based upon a report from the Pennsylvania Liquor Control Board with regard to an irregularity in the signing of the documents with regard to the release from safekeeping (N.T. 6-7).

3. As a result, the officers went to the licensed premises at approximately 2:20 p.m. on May 30, 2012. They observed a Hispanic female bartender and approximately ten patrons (N.T. 8).

4. The officer purchased a twelve ounce can of Coors Lite beer for one dollar. He gave the bartender five dollars and received four dollars in change. She entered the money into a working cash register, which was behind the bar. After receiving his change, he and another officer from the Bureau identified themselves and asked to speak to the person in charge. She indicated that the manager of the day was Miguel Gonzales. Mr. Gonzales was informed that, according to the Pennsylvania Liquor Control Board, the license was in safekeeping and that sales of alcoholic beverages had to cease. He attempted to contact his attorney, but was unable to do so at that time (N.T. 8-9).

5. All the patrons left the premises and the officers left at 2:45 p.m. (N.T. 9).

6. Certified records from the Pennsylvania Liquor Control Board indicate that a search for the Board records determine that the Restaurant Liquor License was in safekeeping on May 30, 2012 (Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On May 30, 2012, Licensee, by its servants, agents or employes, sold alcoholic beverages during a time when the Restaurant Liquor License was being held in safekeeping by the Pennsylvania Liquor Control Board, in violation of Sections 467, 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§§§4-467, 4-491(1), 4-492(2) and 4-493(16) and Section 7.31 of the Liquor Control Board Regulations, 40 Pa. Code §7.31.

PRIOR RECORD:

Licensee has been licensed since May 15, 2008, and has a record of prior violations as follows:

In Re:

Citation No. 09-1905. \$300.00 fine and Verification conditions corrected.

1. Operated the licensed establishment without a valid health permit or license.
June 27, 2009.

DISCUSSION:

On May 30, 2012, Licensee sold alcoholic beverages while the license was being held in safekeeping. Under the circumstances, a monetary penalty 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 Licensee, 100 Allegheny, Inc., License Number R-AP-SS-1381, pay a fine of One Thousand One Hundred Dollars (\$1,100.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

100 Allegheny, Inc.
In Re: Citation No. 12-1011

Jurisdiction of this matter is retained.

Dated this 18TH day of JULY, 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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Detach Here and Return Stub with Payment

The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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100 Allegheny, Inc.