

Mailing Date: FEB 13 2013

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : IN RE: Citation No.: 12-1206  
LIQUOR CONTROL ENFORCEMENT :  
 : BLCE Incident No.: W04-445278  
 v. :  
 : PLCB LID NO.: 28249  
 DIETCH'S I, INC. :  
 T/A DIETCH'S BAR & GRILLE : PLCB License No.: R-SS-7528  
 272 FREEPORT RD. :  
 BLAWNOX :  
 PITTSBURGH, PA 15238-3439 :  
 :  
 :  
 :  
 :

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Emily L. Gustave, Esquire  
**LICENSEE COUNSEL:** Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 15, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Dietch's I, Inc., t/a Dietch's Bar & Grille, License Number R-SS-7528 (hereinafter Licensee).

The citation charges Licensee with violation of Section 491(10) of the Liquor Code, [47 P.S. §4-491(10)] in that on July 9, 2012, Licensee, by its servants, agents or employees, refilled liquor bottles.

Dietch's I, Inc.  
t/a Dietch's Bar & Grille  
IN RE: Citation No. 12-1206

An administrative hearing was conducted on January 15, 2013, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily L. Gustave, Esquire. Licensee was present.

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 11, 2012, and completed its investigation on July 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 July 24, 2012, which was sent by certified mail and returned unclaimed. (N. T. 8, Exhibit C-2)
3. The citation was issued on August 14, 2012, and was sent by certified mail and received by Licensee on August 17, 2012. (N. T. 8, Exhibits C-3, C-4)
4. On June 20, 2012 at 2:26 p.m., a Liquor Enforcement Officer entered Licensee's premises to conduct a routine inspection. (N. T. 9-11)
5. During the inspection, the Enforcement Officer asked a female bartender if liquor bottles were ever refilled. The bartender replied that Licensee does refill larger liquor bottles to the smaller ones with the same type of liquor. (N. T. 11, 12)
6. The bartender did not have access to liquor invoices. Therefore, the Enforcement Officer advised that he would return to complete the review of the records and left contact information for Licensee's President/Secretary/Manager Paul Dietrich. (N. T. 12, 13)
7. On July 9, 2012 at 6:42 p.m., the Enforcement Officer entered Licensee's premises to complete the inspection and met with Mr. Dietrich, who provided the liquor invoices for the last two years. These records indicated that Licensee had purchased 1.75 liter bottles of Jack Daniels Whiskey, Three Olives Cherry Vodka and Jagermeister on multiple dates during that time period. Mr. Dietrich admitted to the Enforcement Officer that he was refilling those liquors into the smaller 750 milliliters bottles of the same brand. (N. T. 13-15, 18-19)

Dietch's I, Inc.  
t/a Dietch's Bar & Grille  
IN RE: Citation No. 12-1206

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 provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On July 9, 2012, Licensee, by its servants, agents or employees, refilled liquor bottles, as charged, in violation of Section 491(10) of the Liquor Code, [47 P.S. §4-491(10)].

PRIOR RECORD:

Licensee has been licensed since January 15, 1992, and has had nine violations.

IN RE:

Citation No. 93-0589. Fine \$250.00.

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 alcoholic beverages after 2:30 a.m.

Citation No. 93-0992. Fine \$250.00.

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 alcoholic beverages after 2:30 a.m.

Citation No. 94-2797. Fine \$150.00 and 1 day suspension.

1. Operated the licensed establishment without a valid health permit or license.
2. Supplied false information on application for restaurant liquor license.

Dietch's I, Inc.  
t/a Dietch's Bar & Grille  
IN RE: Citation No. 12-1206

Citation No. 00-0355. Fine \$200.00.

1. Operated the licensed establishment without a valid health permit or license.

Citation No. 00-1940. Fine \$75.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 02-1035. 1 day suspension.

1. Sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

Citation No. 03-0138. Fine \$350.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.

Citation No. 08-2604X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages.  
September 18, 2008.

Citation No. 10-2097. Fine \$500.00.

1. Violated the Allegheny County Alcoholic Beverage Tax Law.  
May 1, 2008 through July 31, 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.

In further mitigation, the record discloses that this citation represents Licensee's first violation of this type.

For the foregoing reasons, a penalty shall be imposed in the amount of \$150.00.

ORDER:

THEREFORE, it is hereby ordered that Dietch's I, Inc., t/a Dietch's Bar & Grille, License Number R-SS-7528, pay a fine of \$150.00 within 20 days of the mailing date of this

Dietch's I, Inc.  
t/a Dietch's Bar & Grille  
IN RE: Citation No. 12-1206

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.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 8<sup>TH</sup> day of February, 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.**

Detach Here and Return Stub with Payment

---

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

IN RE: Citation No. 12-1206  
Dietch's I, Inc.  
t/a Dietch's Bar & Grille