

Mailing Date: OCT 11 2013

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 12-1334
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W05-443757
v.	:	
	:	
MARK L. WILSON	:	PLCB LID No.: 60873
T/A MATT'S BAR & GRILL	:	
711 MIFFLIN ST.	:	
HUNTINGDON, PA 16652-1715	:	PLCB License No.: R-AP-12574

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Emily L. Gustave, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on September 5, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Mark L. Wilson (Licensee).

The first count charges Licensee with a violation of Section 102 of the Liquor Code [47 P.S. §1-102]. The charge is that, Licensee's licensed premises was not a bona fide restaurant in that Licensee, by your servants, agents, or employees, maintained insufficient food items, eating utensils, dishes and seating, on June 20, 2012.

The second count charges Licensee with a violation of Section 5.23(c) of the Liquor Control Board Regulations [40 Pa. Code §5.23(c)]. The charge is that Licensee, by your servants, agents, or employees, failed to notify the Board within fifteen (15) days of a change of manager, during the period January 31, 2012 through August 14, 2012.

I presided at an evidentiary hearing on August 14, 2013 at 180 Charlotte Drive, Altoona, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Office of Administrative Law Judge sent a notice of hearing to Licensee at the address of record on June 24, 2013, by certified mail, return receipt requested. The notice was received and signed for on June 27, 2013.

2. The Bureau began its investigation on March 3, 2012 and completed it on August 14, 2012. (Commonwealth Exhibit No. C-1, N.T. 8)

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on August 22, 2012. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

Count No. 1

4. On the date charged, Licensee was not a *bona fide* restaurant as Licensee maintained no food. There also was no seating. (N.T. 10-12)

Count No. 2

5. Licensee changed Managers but failed to report same to the Pennsylvania Liquor Control Board. (N.T. 12-13)

CONCLUSION(S) OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count Nos. 1 and 2

2. I sustain the violations as charged.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since October 22, 2008, and has the following Adjudication history:

In Re Citation No.: 09-1597. Fine \$150.00.

Failed to keep records on the licensed premises on June 16, 2009.

In Re Citation No.: 09-2762C. 10 days suspension and RAMP training mandated.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time on October 24, 2009.
2. Sales to a minor on October 22, 2009.
3. Sales to visibly intoxicated persons on September 3, 2009.

In Re Citation No.: 10-1256. Fine \$1,700.00 and 6 days suspension.

1. Sales to visibly intoxicated persons on April 10 and 16, 2010.
2. Used loudspeakers or devices whereby music could be heard outside on April 16, 2010.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time on May 8, 2010.
4. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. on May 8, 2010.

In Re Citation No.: 10-2652. 20 days suspension.

Sales to a visibly intoxicated person on September 18, 2010.

In Re Citation No.: 11-0666C. 7 days suspension.

Sales to a minor on March 18, 2011.

In Re Citation No.: 11-1761. Revocation.

1. Issued worthless checks in payment for malt or brewed beverages dated June 8, 9, 10, 11, 14, 15, July 16, 18, and 19, 2011.
2. Failed to maintain malt or brewed beverage dispensing system cleaning records during the period July 8 through August 17, 2011.
3. Failed to keep records on the licensed premises on August 17, 2011.

4. Fortified, adulterated and/or contaminated liquor on August 17, 2011.
5. Not a bona fide restaurant in that food items were insufficient on August 17, 2011.
6. Failed to notify the Board within 15 days of a change of Manager during the period July 1 through August 17, 2011.
7. Used loudspeakers or devices whereby the sound of music could be heard outside on July 8, 2011.

In Re Citation No.: 11-2002X. Revocation.

Issued worthless checks in payment for malt or brewed beverages dated September 5, 2011.

In Re Citation No.: 12-0306. 6 days suspension deferred.

1. Used loudspeakers or devices whereby the sound of music could be heard outside on October 22, 2011.
2. Failed to notify the Board within 15 days of a change of manager during the period August 18, 2011 through January 30, 2012.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time on October 22, 2011.
4. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding October 22, 2011.
5. Issued worthless checks in payment for malt or brewed beverages dated October 13 and 15, 2011.
6. Transported malt or brewed beverages without a license on twenty dates between June 18, 2011 and November 17, 2011.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [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, or both for the violations found herein.

Discretionary Component(s)

As the license has already been revoked, I revoke the license.

ORDER:

Therefore, this license is revoked for administrative purposes.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 18TH day of September, 2013.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.