

Mailing Date: AUG 08 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-1406
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-448498
	:	
EPIPUREAN INC.	:	
902 VILLAGE AT ELAND	:	PLCB LID - 48331
RTE. 113 & TOWNSHIP LINE RD.	:	
PHOENIXVILLE PA 19460-1946	:	
	:	PLCB License No. R-AP-SS-11803
	:	
CHESTER COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 30, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Epicurean, Inc., License Number R-AP-SS-11803 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, March 19, 2013, 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 Section 471 of the Liquor Code, 47 P.S. §4-471 and Sections 7202 and 7319 of the Tax Reform Code of 1971, 72 P.S. §§7202 and 7319, in that Licensee, Epicurean, Inc., violated the Tax Reform Code of 1971, in that they failed and/or refused to remit, in a timely manner, to the Commonwealth of Pennsylvania, Department of Revenue, sales tax due and owing for the period of February 1, 2011 through May 31, 2012 in the amount of \$63,970.95, and the employer withholding tax due and owing for the period March 1, 2011 through December 31, 2012, in the amount of \$19,147.38.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on July 3, 2012 and ended on August 16, 2012. A notice of violation letter dated September 6, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on September 10, 2012. A citation dated October 30, 2012 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on November 7, 2012. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on January 24, 2013 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received (N.T. 8-9 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises based on a letter from the Pennsylvania Department of Revenue relative to Licensee's failure to pay taxes. As a part of that investigation, the officer contacted a Revenue Enforcement Correction Agent, Wendy Gajewski (N.T. 5-6).

3. The information received from the tax agent indicated that Licensee owed \$81,658.90. Subsequently, the Bureau received additional information which included penalties and interest bringing the amount Licensee owed to \$83,118.33. The officer closed the investigation on August 16, 2012 (N.T. 6-7).

4. Wendy Gajewski, the Revenue Enforcement Collection Agent, is employed by the Pennsylvania Department of Revenue. As part of her duties, she conducted an investigation of the licensed premises. The investigation included a meeting with Mr. Lee Krasley, who is the owner of the licensed premises. Ms. Gajewski indicated that Licensee was behind in his sales taxes and employee withholding. Numerous letters have been issued to Mr. Krasley, including a letter telling them to surrender their sales tax license for failure to be in compliance (N.T. 11-12 and Exhibit B-3).

5. Ms. Gajewski sent Mr. Krasley a schedule of his sales taxes and entered into a deferred payment agreement with Mr. Krasley on March 15, 2012. The Department of Revenue also had Mr. Krasley sign a paper with his deferred payment allowing him to renew his liquor license on the condition that if he failed to make his payments on the deferred payment plan, his liquor license would be in jeopardy (N.T. 11-13).

6. Mr. Krasley entered into the agreement on March 15, 2012 and made two of the scheduled weekly payments, one on May 1, 2012 and a second two weeks later. At that point, he was notified that he was in default of his agreement, and Ms. Gajewski contacted the Bureau of Enforcement (N.T. 13-14).

7. Ms. Gajewski took the signed letter to the licensed premises and Mr. Krasley was not present. An hour later, Mr. Krasley called Ms. Gajewski concerning the letter. The records of the Department of Revenue certify that on June 26, 2012, Wendy Gajewski, a revenue agent, reviewed the Sales Use and Hotel Occupancy packet and Employee Withholding Tax Account of the Licensee. The review disclosed that on November 1, 1989, Sales Use and Hotel Occupancy Tax License was issued to Lee Krasley of Epicurean, Inc. and on March 9, 2012, the Sales Use and Hotel Occupancy Tax License was revoked. On November 1, 1989, Employee Withholding Account was issued to Epicurean. The review revealed that \$81,658.00 is due of which \$7,881.17 is for taxes, \$22,553.64 is for penalties and \$1,224.09 is for interest and legal fees. As of August 1, 2012, the balance that was owed for the combined withholding tax and sales tax was \$83,118.33 (N.T. 15-19 and Exhibit B-4).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Licensee, Epicurean, Inc., violated the Tax Reform Code of 1971, in that they failed and/or refused to remit, in a timely manner, to the Commonwealth of Pennsylvania, Department of Revenue, sales tax due and owing for the period of February 1, 2011 through May 31, 2012, and the employer withholding tax due and owing for the period March 1, 2011 through December 31, 2012, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471 and Sections 7202 and 7319 of the Tax Reform Code of 1971, 72 P.S. §§7202 and 7319.

PRIOR RECORD:

Licensee has been licensed since November 7, 2001, and has a record of prior violations as follows:

In Re:

Citation No. 03-1662. \$100.00 fine.

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

Citation No. 06-2538X. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
August 25, 2006.

Citation No. 11-0021X. \$250.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages.
November 26, 2010.

Citation No. 11-1926X. \$300.00 fine and one day deferred suspension.

1. Issued worthless checks in payment for malt or brewed beverages.
September 13, 2011.

Citation No. 11-2121X. \$300.00 fine and one day deferred suspension.

1. Issued worthless checks in payment for malt or brewed beverages.
October 5, 7, 11 and 17, 2011.

Citation No. 12-0066X. \$300.00 fine and one day deferred suspension.

1. Issued worthless checks in payment for malt or brewed beverages.
October 17 and 19, 2011.

DISCUSSION:

The Licensee violated the Tax Reform Code in that they failed to remit in a timely manner to the Commonwealth of Pennsylvania revenue sales use and hotel occupancy tax and employee withholding tax for the period February 1, 2011 through May 21, 2011 in the amount of \$83,118.33, which includes penalties and interest. Licensee was given an opportunity to pay in weekly installments, but could not or would not comply with that schedule. The issuance of a liquor license is contingent upon clearance from the Department of Revenue. Licensee is therefore, ineligible to receive a license to sell alcoholic beverages.

According to the Bureau of Enforcement, the bank has now taken the premises. It is no longer operating, at least not by Mr. Krasley.

A review of Licensee's prior history indicates numerous violations for issuing worthless checks, but there are no prior violations of any other nature. Under the circumstances, a \$300.00 monetary penalty shall be imposed.

Epicurean, Inc.
In Re: Citation No. 12-1406

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

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Epicurean, Inc., License Number R-AP-SS-11803, pay a fine of Three Hundred Dollars (\$300.00) 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.

Jurisdiction of this matter is retained.

Dated this 1ST day of AUGUST, 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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Epicurean, Inc.
In Re: Citation No. 12-1406

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

In Re: Citation No. 12-1406
Epicurean, Inc.