

Mailing Date: FEB 21 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-1472
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-448914
	:	
ALGEO TAVERN LLC	:	
2119-21 ORTHODOX ST.	:	PLCB LID - 63439
PHILADELPHIA PA 19124-3411	:	
	:	
	:	PLCB License No. R-AP-9675
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**TIMOTHY ALGEO  
PRO SE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 9, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Algeo Tavern, LLC, License Number R-AP-9675 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, March 12, 2013, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

This matter was bifurcated in that the Licensee requested to present a videotape to the Court. The Licensee was instructed to present the videotape to the Bureau of Enforcement in some type of reasonable readable format prior to the hearing. The Licensee seemingly was unable to do so. The matter was called on Citation No. 12-1472; however no one appeared at the November 20, 2013 listing of the case. The Bureau requested the record to be closed and the Court granted this Motion.

The citation contains three counts.

The first count charges Licensee with violation of Section 102 of the Liquor Code, 47 P.S. §1-102, in that on September 1, 2012, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on September 1, 2012, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, twenty (20) years of age.

The third count charges Licensee with violation of Section 493(34) of the Liquor Code, 47 P.S. §4-493(34), in that on August 23, 2012, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond the licensee's property line.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on July 16, 2012 and ended on September 12, 2012. A notice of violation letter dated September 26, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was returned unclaimed. A citation dated October 9, 2012 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on October 18, 2012 (N.T. 24-27 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement who has been employed with the Bureau for four and half years conducted an investigation of the licensed premises. The officer went to the premises on August 23, 2012 at approximately 11:10 p.m. and entered the premises on Orthodox Street from a westerly direction. When the officer was approximately twenty-five feet away, the officer could hear loud music coming from inside the premises (N.T. 16-17).

3. When the officer entered the premises, he went up to the bar and made a purchase of alcoholic beverages and attempted to determine where the music was coming from. The officer heard the same music inside that he had heard outside the premises (N.T. 17).

4. The officer determined that music was coming from a touch screen jukebox on the back right wall of the licensed premises. Patrons were picking selections from the jukebox. The officer believed that the music was coming from speakers inside the jukebox. The officer saw two speakers on the side of the jukebox and believed the music was coming from other areas that had speakers in the ceiling, but he could not see the loudspeaker system (N.T. 17-18).

5. The officer departed the premises and returned to his vehicle to conduct a surveillance of the premises. When the officer was approximately twenty-five feet outside the premises, he could still hear music coming from the premises. He noted that at twenty-five feet the music was the same that he had heard inside the premises. The officer continued his surveillance until approximately 11:50 p.m. and then departed the area (N.T. 19).

6. On September 1, 2012, the officer again visited the licensed premises. An undercover officer visited the premises at approximately 9:30 p.m. and the officer entered at approximately 10:30 p.m. as a part of a detail. The officer went to the premises to conduct a routine inspection. He noted that there was no food on the premises and that there was temporary authority to operate posted that had expired. The premises did have authority to operate, however, the current letter of authority was not displayed on the premises. The Licensee was not cited for that violation. The officer noted that there was a kitchen; but no food. The officer asked the bartender if the premises served food and the bartender indicated that they did not. There was no food on the premises. The original complaint issued by the Bureau was for refilling, however, the officers noted no evidence of refilling (N.T. 20-22).

7. An officer from the Bureau of Enforcement, who at the time of hearing had been employed with the Bureau for approximately six and a half years, assisted in an investigation of the licensed premises. The officer arrived at the licensed premises at approximately 9:25 p.m. on September 1, 2012 in an undercover capacity (N.T. 42-43).

8. The officer noted that there was a white female bartender, a black male bartender and approximately ten patrons on the premises. All the patrons were moving in and out of the bar and "hanging on the corner" (N.T. 43-44).

9. Shortly after the officer arrived, within ten to fifteen minutes, a group of young individuals came inside the bar. The officer contacted the detail of officers via text message, informing them that there appeared to be youthful appearing individuals inside the bar (N.T. 43-44).

10. The officer noted one youthful appearing male accompanied by two other individuals. They were all consuming alcoholic beverages, one individual was drinking a Bud Lite beer. That youthful appearing male was going in and out of the bar leaving the beer on the counter as he was going in and out and coming back and forth (N.T. 44-45).

11. The officer did not see M.F. purchase the beer, but did observe the individual consuming the alcoholic beverage while the officer stood approximately five feet away (N.T. 45-46).

12. The officer made observations for approximately one hour before the detail arrived at approximately 10:30 p.m. The officer remained undercover throughout the detail coming into the premises (N.T. 46-47).

13. The officer identified M.F. from certified records of the Pennsylvania Department of Transportation, known as the JNET. The JNET file indicates that M.F. was born July 7, 1992. The officer identified this individual as an underage person who was consuming alcoholic beverages on the licensed premises (N.T. 48-50 and Exhibit B-3).

14. M.F. was born on July 7, 1992. He was twenty years of age as of the date of hearing. On Saturday, September 3, 2012, he indicated that he entered the premises to visit the female bartender and contrary to the statement of the officer, stated that he did not consume alcoholic beverages on the licensed premises. When questioned by the officer, M.F. stated that a friend purchased a twelve ounce bottle of Bud Light for M.F. He responded that Two Chains, one of the bartenders on duty at that time, served him the alcoholic beverages. He was asked how much the beer cost and he replied two dollars and stated that his friend paid for it (N.T. 52-65 and Exhibit B-3).

15. An officer from the Bureau of Enforcement who was employed by the Bureau at the time of the hearing for over eight years testified that he was a part of the raid detail on the night of September 1, 2012. He was responsible for securing the area and carding youthful appearing individuals inside the premises. When he approached the premises, he observed M.F. and an unidentified female sitting on the top step of the bar. They were directly in front of the door. The officer questioned M.F. with regard to his age and he immediately told the officer he was twenty-one years old. He stumbled on his words and the officer determined that he was underage. The officer again asked him to stand up and move to the side and to place his hands on the wall. He conducted a pat down search and the officer felt a bulge and removed the wallet from his pocket. He opened the wallet and there was an identification card showing that the individual was under the age of twenty-one. In addition, the officer noted while talking to M.F., that he had a strong odor of alcohol on his breath and he had glassy and bloodshot eyes. He was disrespectful and his demeanor was aggressive. At that time, the officer placed him in cuffs and walked him back to his unmarked vehicle (N.T. 73-74)

16. The undercover officer identified M.F. stating that he had seen him inside the bar consuming alcoholic beverages (N.T. 75 and Exhibit B-4).

#### CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On September 1, 2012, the licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employes, maintained insufficient food items, in violation of Section 102 of the Liquor Code, 47 P.S. §1-102.

Count No. 2 - On September 1, 2012, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

Count No. 3 - On August 23, 2012, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond the licensee's property line, in violation of Section 493(34) of the Liquor Code, 47 P.S. §4-493(34).

PRIOR RECORD:

Licensee has been licensed since November 7, 2011, and has a record of prior violations as follows:

In Re:

Citation No. 12-0555. Two days suspension.

1. Sales after the license expired and had not been renewed and/or validated.  
January 12, 2012.
2. Sales to a minor.  
January 12, 2012.

Citation No. 12-0931. Six days suspension.

1. Sales without a license after the Temporary Authority granted by the Board had expired.  
May 4, 2012.
2. Sales to minors.  
April 20 and May 4, 2012.
3. Minors frequenting.  
April 20 and May 4, 2012.

DISCUSSION:

An officer from the Bureau of Enforcement conducted an investigation of the licensed premises on August 21, 2012, which resulted in the Licensee having music that could be heard beyond the Licensee's property line at a distance of approximately twenty-five feet away from the premises. The music was determined to be coming from the jukebox with its own specifications and possibly other speakers on the premises. However, the officer was unable to determine where any other speakers might have been located.

The officer conducted an inspection of the premises on September 1, 2012. The detail of officers was preceded by an undercover officer who remained on the premises for approximately one hour upon the detail entering the premises. By the time the detail entered the premises, they had been advised by the undercover officer that there had been an individual who was consuming alcohol on the licensed premises, who appeared to be under the age of twenty-one. The individual was not personally served the alcoholic beverages, but was given the alcoholic beverages, although he did not order or pay for it. The bartender did give the alcoholic beverages to that individual.

While the individual denied that he consumed of any portion of it, the officer indicated that he did see him consume the beer. The Court found the officer's testimony credible. Nevertheless, it was clear that M.F. did take possession of the beer after it was served to him by the bartender.

When the detail concluded their inspection, they determined that there was no food on the premises and the premises was not a bona fide restaurant, in that a restaurant and a holder of a restaurant liquor license is required to be able to provide food service.

After reviewing the Licensee's prior record, it is noted that the Licensee was cited for sales to minors in January, April and May of 2012 relative to two separate citations. Under the circumstances, a suspension is mandatory. It is our understanding that there is a transfer pending, however, the Administrative Law Judge has no recourse, but to suspend the license. The Licensee should contact the Pennsylvania Liquor Control Board if the Licensee desires to have this matter resolved other than by suspension.

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 Count Nos. 1 and 3 of this case.

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 Count No. 2 of this case.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$250.00.
- Count No. 2 - Five days suspension.
- Count No. 3 - \$250.00.

Accordingly, we issue the following

ORDER:

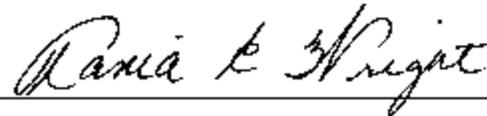
THEREFORE, it is hereby Ordered that Licensee, Algeo Tavern, LLC, License Number R-AP-9675, pay a fine of Five Hundred Dollars (\$500.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Alego Tavern, LLC, License Number R-AP-9675, be suspended for a period of five (5) days. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

**Jurisdiction of this matter is retained.**

Dated this 20<sup>TH</sup> day of February, 2014.



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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Algeo Tavern, LLC  
In Re: Citation No. 12-1472

Detach Here and Return Stub with Payment

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The fine must be paid by a check drawn on the business or trust account of your attorney, who must be licensed in this Commonwealth, a Treasurer's Check, Cashier's Check or Money Order. **Personal and business checks are not acceptable unless they are certified by your bank.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation (please use the Return Stub when mailing payment or write your citation number on the check) to:

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

In Re: Citation No. 12-1472  
Algeo Tavern, LLC