

Mailing Date: JUN 28 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 12-1556
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-443846
	:	
STL INVESTMENTS, INC.	:	
611 MILLERS RUN RD.	:	PLCB LID No.: 63676
P O BOX 11	:	
SOUTH FAYETTE TWP.	:	PLCB License No.: R-AP-13657
CUDDY, PA 15031-0011	:	
	:	
	:	
	:	
	:	

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 October 29, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against STL Investments, Inc., License Number R-AP-13657 (hereinafter Licensee).

This citation contains two counts.

The first count charges Licensee with violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)] in that on February 26, 2012, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of

alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)] in that on February 26, 2012, Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

An administrative hearing was conducted on Tuesday, April 23, 2013, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily L. Gustave, Esquire. Licensee appeared pro se.

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 March 6, 2012, and completed its investigation on July 16, 2012. (N. T. 10-11, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated August 6, 2012, which was sent by certified mail, and received on August 13, 2012. (N .T. 10, Exhibit C-2)
3. This citation was issued on October 29, 2012, and was sent by certified mail and remailed first class mail and not returned. (N. T. 10, Exhibits C-3, C-4)

COUNTS ONE AND TWO

4. During the early morning hours of Sunday, February 26, 2012 at 3:10 a.m., a South Fayette Township police officer, while on patrol, noted that approximately seven to eight vehicles were parked in the premises parking lot and observed through a large window activity inside Licensee's premises. (N. T.18-23)
5. A few minutes later, after seeking the assistance of a fellow officer, two South Fayette officers departed their vehicles and approached Licensee's premises as they observed four individuals departing. (N. T. 23-27, 31-32)
6. Upon entering the premises, one of the officers observed Licensee's bartender, Angela Mann, with two individuals seated at the bar, one in possession of a bottle of Yuengling beer and a second in possession of a plastic cup approximately three quarters filled with draft beer. (N. T. 27-30, 32-33)

7. Upon being advised that individuals were present and in possession of alcoholic beverages after 2:30 a.m., Ms. Mann promptly removed the bottle of Yuengling beer and the plastic cup of draft beer from the bar. (N. T. 29-30)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged in Counts one and two of this citation 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 requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On February 26, 2012, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)].

3. On February, 26 2012, Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)].

PRIOR RECORD:

Licensee has been licensed since July 26, 2010, and has had one violation.

IN RE:

Citation No. 11-0611. Fine \$150.00.

1. Operated the licensed establishment without a valid health permit or license.
February 1 through March 1, 2011.

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 types found in this case.

STL Investments, Inc.,
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In consideration of the fact that counts one and two of this citation arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

In mitigation, citation represents Licensee's first violations of these types.

For the foregoing reasons, a penalty shall be imposed in the amount of \$400.00.

ORDER:

THEREFORE, it is hereby ordered that STL Investments, Inc., License Number R-AP-13657, pay a fine of \$400.00 within 20 days of the mailing date of this 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 19TH day of JUNE, 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.

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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

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STL Investments, Inc.