

Mailing Date: AUG 14 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 12-1611
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W08-447549
	:	
J & L LITTLE TAVERN, INC.	:	
T/A R BAR	:	PLCB LID No.: 11533
1102 E. 26 <sup>TH</sup> ST.	:	PLCB License No.: R-AP-SS-4671
ERIE, PA 16504-2912	:	
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**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 November 13, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against J & L Little Tavern, Inc., t/a R Bar, License Number R-AP-SS-4671 (hereinafter Licensee).

The citation charges Licensee with a violation of Section 491(1), 492(2) and 493(16) of the Liquor Code, [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)] in that on August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16, 2012, Licensee, by its servants, agents or employees, sold alcoholic beverages after its restaurant liquor license expired on July 31, 2012, and had not been renewed and/or validated.

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An administrative hearing was conducted on Thursday, June 13, 2013 at 9:30 a.m., at 2084 Interchange Road, Erie, PA. The Bureau was represented by Emily L. Gustave, Esquire. The hearing was held ex-parte.

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 June 8, 2012, and completed its investigation on September 25, 2012. (N. T. 9, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated October 24, 2012, which was sent by certified mail and was received returned unclaimed. (N. T. 8, Exhibit C-1, C-2)
3. This citation was issued on November 13, 2012, was sent by certified mail and returned and was re-mailed on December 13, 2012. (N. T. 8, Exhibit C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on April 19, 2013 by first class mail as well as certified mail. (Official Notice)
5. The aforementioned mailing of the notice of hearing was sent by certified mail and returned marked "unable to forward." (Official Notice)
6. Licensee's Liquor License expired on July 31, 2012 and was not renewed until August 17, 2012. (N. T. 4, 12, 13, 15, 18)
7. On August 3, 2012 at 11:55 p.m., a Liquor Enforcement Officer entered Licensee's premises in an undercover capacity and observed Corporate Officer and Board-approved manager, Stacy Edinger, tending bar and rendering service to eight patrons. (N. T. 9, 10, 11)
8. During this visit, the Enforcement Officer purchased a mixed drink and observed various patrons purchase alcoholic beverages continuing after midnight, then being August 4, 2012. (N. T. 9, 11, 12)
9. Licensee did not have an active Liquor License or Temporary Authority to Operate during the period of August 1, 2012 through August 16, 2012. (N. T. 13)
10. On September 21, 2012 at 3:20 p.m., an Enforcement Officer conducted a routine inspection of Licensee's premises after identifying himself to bartender, Lisa Edinger, who was rendering service to five patrons. (N. T. 15)

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11. During the course of the inspection, the Enforcement Officer reviewed Licensee's daily sales reports and cash register receipts for the period of August 1 through August 16, 2012 which revealed that alcoholic beverages were sold every day except August 15, 2012. (N. T. 15, 16, 17)

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 requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On August 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 16, 2012, Licensee, by its servants, agents or employees, sold alcoholic beverages after its restaurant liquor license expired on July 31, 2012, and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)].

PRIOR RECORD:

Licensee has been licensed since April 3, 1979, and has had 14 prior violations.

IN RE:

Citation No. 88-1054. Fine \$1,000.00.

1. Sales between 2:00 a.m. and 7:00 a.m.

Citation No. 96-0286. 3 days suspension.

1. Sales between 2:00 a.m. and 7:00 a.m.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.

Citation No. 97-2038. Fine \$75.00.

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

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Citation No. 02-0342. Fine \$1,500.00 and 7 days suspension.

1. Sales to minors.
2. Minors frequenting.

Citation No. 02-0679. Fine \$500.00.

1. Refilled liquor bottles.
2. Fortified, adulterated and/or contaminated liquor.

Citation No. 04-0973. Fine \$200.00.

1. Licensee's corporate president consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

Citation No. 05-0405. Fine \$1,000.00.

1. Sales on Super Bowl Sunday during prohibited hours.

Citation No. 06-0155C. Fine \$1,500.00 and 1 day suspension.

1. Sales to a minor.  
December 9, 2005.

Citation No. 08-2017. Fine \$300.00 and one day suspension with thereafter conditions. Suspension vacated.

1. Not a bona fide restaurant in that food items and eating utensils were insufficient.  
July 22, 2008.

Citation No. 09-1257. Fine \$350.00 and one day suspension with thereafter conditions.

1. Not a bona fide restaurant in that food items and eating utensils were insufficient.  
April 24, 2009.

Citation No. 09-2527. Fine \$200.00 and one day suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.  
September 28, 2009.

Citation No. 10-0211. Fine \$200.00. Fine not paid and license suspended one day and thereafter until fine paid.

1. Operated the licensed establishment without a valid health permit or license.  
December 30, 2009.

Citation No. 10-2192. Fine \$1,400.00 and one day suspension.

1. Sales during a time when the license was suspended.  
September 20, 2010.

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2. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.  
September 20, 2010.
3. Failed to remove the license from display as ordered by the OALJ.  
September 20, 2010.

Citation No. 11-0515. Fine \$2,000.00 and seven days suspension.

1. Sales during a time when the license was suspended.  
February 8 and 10, 2011.
2. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.  
February 7, 8 and 10, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where 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. §4-471(b)] and/or the Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

Licensee's failure to appear at the administrative hearing demonstrates the lack of interest in this liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,500.00 and a suspension of three (3) days.

ORDER:

THEREFORE, it is hereby ordered that J & L Little Tavern, Inc., t/a R Bar, License Number R-AP-SS-4671, pay a fine of \$1,500.00 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.

IT IS FURTHER ORDERED that the restaurant liquor license of J & L Little Tavern, Inc., License No. R-AP-SS-4671 be suspended for a period of three (3) days. However, the suspension period is deferred pending the reactivation of Licensee's license, at which time the suspension period will be fixed by further Order.

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

Jurisdiction is retained to ensure compliance with this Order.

Dated this 6<sup>TH</sup> day of AUGUST, 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

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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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