

Mailing Date: JUL 30 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-0099
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-454953
	:	
8 MANOA INC.	:	
8 N. MANOA RD.	:	PLCB LID - 46237
HAVERTOWN TWP.	:	
HAVERTOWN PA 19083-3426	:	
	:	PLCB License No. R-AP-SS-EHF-6816
	:	
DELAWARE 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 February 5, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 8 Manoa, Inc., License Number R-AP-SS-EHF-6816 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday November 20, 2103, 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 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), in that during the period December 1, 2012 through January 8, 2013, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Restaurant Liquor License expired on November 30, 2012 and had not been renewed and/or validated.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on December 24, 2012 and ended on January 9, 2013. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received at the licensed premises. A citation dated February 5, 2013 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on February 7, 2013. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on September 27, 2013 by certified mail, return receipt requested, and by first class mail, notifying Licensee of the hearing on November 20, 2013 (N.T. 8-10 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises in Havertown, Pennsylvania. In December of 2012, the officer received a complaint from the PLCB stating that premises' liquor license had expired on November 30, 2012, and that the premises might be open and operating without a valid liquor license (N.T. 5-6).

3. On January 7, 2013, the officer contacted the PLCB and determined that the license still had not been renewed. On that same date at approximately 3:20 p.m., the officer and a second officer went to the licensed premises. The second officer remained outside while the investigating officer entered the premises (N.T. 6).

4. The officer found that the premises was open and there was a male bartender, later identified as Joseph Kruz, tending bar. The officer approached the bar and ordered and was served a twelve-ounce bottle of Coors Light beer. After paying for the alcohol, the money was placed in a working cash register (N.T. 6).

5. After the officer had paid for the alcoholic beverages, he texted the officer who had remained outside and he entered the premises. The officer spoke with Mr. Kruz, who contacted the owner of the premises who stated that due to medical issues with his wife, he simply forgot to renew the license. The owner was not at the premises, but returned the officer's call at approximately 7:00 – 7:15 on the same evening (N.T. 7).

6. On Wednesday, January 9, 2013, the officer received notification from the PLCB that the premises had temporary authority to operate (N.T. 8).

7. Certified records of the Liquor Control Board indicate that the premises did not have authority to serve alcoholic beverages except for the dates of December 1, 2012 and January 8, 2013 (N.T. 10-11 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

During the period December 1, 2012 through January 8, 2013, Licensee, by its servants, agents or employees, sold alcoholic beverages after the Restaurant Liquor License expired on November 30, 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 August 15, 2000, and has a record of prior violations as follows:

In Re:

Citation No. 09-1238. \$500.00 fine.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.
April 15, 2009.

Citation No. 09-2352C. \$1,250.00 fine and R.A.M.P. training mandated.

1. Sales to a minor.
September 10, 2009.

Citation No. 10-0829C. \$2,500.00 fine and one day suspension.

1. Sales to a minor.
March 19, 2010.

Citation No. 11-0335. Two days suspension.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
January 16, 2011.

DISCUSSION:

Licensee has a prior record, which includes gambling, sales to minors and Sunday sales. Based upon the record of violations, it is mandatory that the license be suspended. Under the circumstances, a two day suspension shall be imposed.

8 Manoa, Inc.
In Re: Citation No. 13-0099

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in 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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that the Restaurant Liquor License of 8 Manoa, Inc., License Number R-AP-SS-EHF-6816 (including all permits and Licensee Discount Card), be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, October 20, 2014 and **ENDING** at 7:00 a.m. on Wednesday, October 22, 2014.

Licensee is directed on Monday, October 20, 2014 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

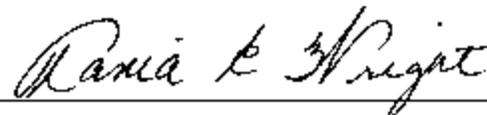
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Wednesday, October 22, 2014 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction of this matter is retained.

Dated this 23RD day of JULY, 2014.



Tania E. Wright, J.

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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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