

Mailing Date: OCT 22 2013

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-0176
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-452206
v.	:	
	:	
OMSAIBABAKRUPA COMPANY	:	PLCB LID No.: 60640
410 N. MAIN ST.	:	
OLD FORGE, PA 18518	:	
	:	PLCB License No.: R-SS-15039

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

FOR LICENSEE: James M. Petrascu, Esquire

**BACKGROUND:**

This proceeding arises out of a citation, containing one count, that was issued on February 15, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Omsaibabakrupa Company (Licensee).

The citation charges Licensee with a violation of Sections 401(a) and 406(a)(1) of the Liquor Code [47 P.S. §§4-401(a) and 4-406(a)(1)]. The charge is that Licensee, by your servants, agents, or employees, sold, furnished or gave liquor for consumption off premises, on October 12, 2012.

I presided at an evidentiary hearing on August 15, 2013 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT:**

1. The Bureau began its investigation on October 12, 2012 and completed it on January 13, 2013. (N.T. 8)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on January 15, 2013. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

3. On October 12, 2012, an undercover Bureau Enforcement Officer entered the premises at approximately 8:50 p.m. The Officer retrieved a six-pack of beer from the cooler with the intention of making a purchase. He placed the six-pack on the counter. Behind the male sales clerk, the Officer noticed already prepared shots of liquor in little plastic cups with lids on them. The Officer requested a shot of liquor which was served to him by the sales clerk. After paying for the order, the Officer departed with the six-pack and shot of liquor. The only conversation the Officer had with the sales clerk was regarding the price. (N.T. 8-12)

4. The Officer returned to the premises on December 12, 2012. He again attempted to purchase a six-pack of beer and a shot of liquor. The female sales clerk told the Officer that he could not depart the premises with the shot of liquor. The Officer declined the liquor purchase, leaving the premises with a six-pack of beer. (N.T. 12)

5. On January 13, 2013, the Officer conducted a routine inspection of the premises. He was assisted by an employee. The Officer advised the employee of the sale of liquor which occurred on the Officer's first visit. The employee told the Officer the clerk was not supposed to sell the shot to go. (N.T. 13)

6. It is not Licensee's practice to sell shots of liquor to go. The shots are to be consumed within the premises. The sales clerk on duty on October 12, 2012 should not have permitted the Officer to depart the premises with the shot. Licensee packages the shots with lids for cleanliness. There is a two shot limit per customer. Licensee does not have a bar for serving drinks. (N.T. 25-30)

**CONCLUSION(S) OF LAW:**

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. I sustain the violation as charged.

**DISCUSSION:**

In order for a violation to occur, the Bureau must establish intent, that is, that the sales clerk intended to enter into a contract with the undercover Officer to purchase a shot of liquor for off premises consumption. Intent may be inferred by conduct [**Com. v. Franklin**, 69 A.3d 719 (Pa.Super. 2013)]. Based on what I heard, I draw the inference that the sales clerk intended to sell a shot of liquor to go.

**PRIOR ADJUDICATION HISTORY:**

Licensee has been licensed since September 19, 2008, and has the following Adjudication history:

In Re Citation No.: 09-0987C. Fine \$1,250.00 and RAMP training mandated.

Sales to a minor on March 30, 2009.

**PENALTY ASSESSMENT CRITERIA:**

***Mandatory Requirement(s)***

Liquor Code Section 471 [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 the violation found herein.

***Discretionary Component(s)***

I impose a \$50.00 fine.

**ORDER:**

***Imposition of Fine***

Licensee must pay a \$50.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

***Retaining Jurisdiction***

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 30<sup>TH</sup> day of September, 2013.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

### Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us). The full requirements for an appeal can be found in 47 P.S. §4-471.

### 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).

PLCB-Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
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