

Mailing Date: **JAN 31 2014**

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-0290
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-455168
v.	:	
	:	
CHECKERS BISTRO LLC	:	PLCB LID No.: 58075
T/A CHECKERS BISTRO	:	
300-308 W. JAMES ST.	:	
LANCASTER, PA 17603-2912	:	PLCB License No.: R-AP-SS-9338

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on February 21, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Checkers Bistro LLC (Licensee).

The first count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 7215, 7216, 7217 and 7318 of the Tax Reform Code of 1971 [72 P.S. §§7215, 7216, 7217 and 7318]. The charge is that you, Checkers Bistro LLC, violated the Tax Reform Code of 1971, in that you failed and/or refused to file, in a timely manner, sales tax returns with the Commonwealth of Pennsylvania, Department of Revenue, for the period of February 2012 through November 2012, and/or refused to file, in a timely manner, employee withholding tax returns with the Commonwealth of Pennsylvania, Department of Revenue, for the period of January 2012 through September 2012.

The second count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 7208(c) of the Tax Reform Code of 1971 [72 P.S. §7208(c)]. The charge is that Licensee, your servants, agents, or employees, engaged in taxable sales or service without a sales tax license, during the period August 17, 2012 through January 15, 2013.

I presided at an evidentiary hearing on December 10, 2013 at 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

FINDINGS OF FACT:

1. The Office of Administrative Law Judge sent a notice of hearing to Licensee at the address of record on October 21, 2013, by certified mail, return receipt requested and first class mail. The certified mail notice was returned unclaimed, unable to forward. The first class notice was not returned.

2. The Bureau began its investigation on December 27, 2012 and completed it on January 28, 2013. (N.T. 10)

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on February 6, 2013. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

Count Nos. 1 and 2

4. On December 31, 2012, at about 8:20 p.m., an undercover Bureau Enforcement Officer entered the premises. The Officer purchased prepared food for which he was charged sales tax. (N.T. 13-16)

5. On January 15, 2013, the Officer conducted an administrative inspection with the assistance of Licensee's Co-Member, Mr. Payne. Mr. Payne acknowledged Licensee had yet to file Commonwealth sales tax and withholding tax returns as charged in Count No. 1. (N.T. 16-17)

6. Mr. Payne also acknowledged that Licensee engaged in sales tax collections when Licensee had no authority to do so as charged in Count No. 2. (N.T. 16-21)

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 violations as charged.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since May 7, 2007, and has no prior Adjudications.

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 violations found herein.

Discretionary Component(s)

When Licensee had no authority to collect sales tax, Licensee was also without authority to engage in transactions otherwise warranting sales tax collection. Licensee was therefore prohibited from selling prepared food. Consequently, Licensee was not a *bona fide* restaurant during that interval thus selling alcoholic beverages illegally.

Moreover, a licensee is required to be current with state taxes in order to be issued a liquor license in the first instance. Licensee brazenly continued to operate and collect sales tax. I intend to send a clear message that such conduct will not be tolerated.

Bureau counsel has provided two properly authenticated certifications; one from the Pennsylvania Department of Revenue and the other from the Pennsylvania Department of Labor and Industry. The former indicates that, as of December 20, 2013, Licensee has an employer withholding tax balance due of \$5,347.30 and an outstanding sales tax balance due of \$1,400.08. The latter certification advises that as of January 10, 2014, Licensee did not file quarterly wage reports with the Pennsylvania Department of Labor and Industry. Furthermore, Licensee's account has a balance due of \$11,965.72.

While Licensee has not been charged with failing to remit Unemployment Compensation Tax, I have the discretion to consider that failure as an exacerbating factor particularly because, as a condition of the license, Licensee must be current with the Unemployment Compensation Tax.

Therefore, I impose:

Count No. 1 - \$1,000.00 fine and fifteen days suspension and continuing thereafter until Licensee submits the appended Certification, properly completed.

Count No. 2 - \$1,000.00 fine and seven days suspension.

ORDER:

Imposition of Fine

Licensee must pay a \$2,000.00 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.

Suspension Length and Date(s)

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the license, for twenty-two days, beginning Thursday, March 13, 2014, 7:00 a.m., and continuing thereafter until Licensee submits the appended Certification.

Instructions to Post Notice of Suspension Placard

Licensee shall post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Thursday, March 13, 2014, 7:00 a.m. and continuing thereafter until I issue a further Order terminating the suspension.

Consequence of Failing to Comply With This Order

In addition to any other consequence at law, if Licensee does not comply with all conditions herein, the Bureau may issue an additional citation alleging Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

Requirement to Submit Certification

Licensee must submit the appended Certification, addressed to: Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

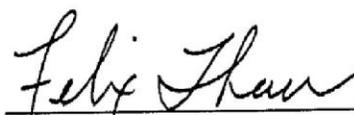
License Suspension to Continue Until Further Order Issued

Licensee **may not** resume normal operation until I issue an Order ending the suspension.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 27th day of January, 2014.



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. If you have not already done so, it may be prudent for you 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. The full requirements for an appeal can be found in 47 P.S. §4-471.

Detach Here and Return Stub with Payment

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
Harrisburg, PA 17110-9661

Checkers Bistro LLC
In Re Citation No.: 13-0290

