

Mailing Date: NOV 14 2013

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

PENNSYLVANIA STATE : In re Citation No. 13-0302  
POLICE, BUREAU OF :  
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W01-454481  
 :  
v. : PLCB LID No. 43392  
 :  
ANCIENT ORDER OF HIBERNIANS DIV 61 : PLCB License No. C-6344  
4131 RHAWN ST. PO BOX 65576 :  
PHILADELPHIA, PA 19136-2712 :

JUDGE SHENKLE  
BLCE COUNSEL: Andrew R. Britt, Esq.  
LICENSEE: John Gill, President of Licensee

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 26, 2013. There are two counts in the citation.

The first count alleges that Licensee violated §§491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), during the period November 1 through December 20, 2012, by selling alcoholic beverages after its club liquor license expired on October 31, 2012, and had not been renewed and/or validated.

The second count alleges that Licensee violated §406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), on December 20, 2012, by selling alcoholic beverages to nonmembers.

A hearing was held on September 24, 2013, in Plymouth Meeting, Pennsylvania.

**FINDINGS OF FACT:**

1. The Bureau investigated Licensee during the period November 1 through December 20, 2012, and sent it written notice of the results on February 7, 2013 (N.T. 8-10, Exhibit B-1).
2. A copy of this citation was received by Licensee on March 2, 2013 (N.T. 8-10, Ex. B-1).
3. On December 20, 2012, the Board's Licensee Information Access System (LIAS) showed this license to be expired, with no authority to operate. At 10:40 p.m. on that date a Liquor

Enforcement Officer entered the licensed premises and sat at the bar. The bartender was engaged in conversation with someone at the end of the bar and another person asked the officer what she wanted to drink. She ordered a bottle of beer and put a five dollar bill on the bar. At that moment the bartender approached the officer and asked if she was a member. She said that she was not, and told the bartender that she needed to speak with him in the kitchen (N.T. 5-6).

4. The officer's membership status was not questioned before the bartender asked about it. Speaking with the bartender in the kitchen, the officer told him about the expired state of the license. The bartender got Licensee's president on the phone, and the officer explained the situation to him. The president said he was fairly sure the renewal application had been mailed in. The officer told him he would have to look into that, but in the meantime Licensee would have to stop serving alcoholic beverages (N.T. 6-7).

5. The officer noticed that the license posted in the premises was a duplicate, and the president speculated that the paperwork had gotten mixed up somehow. Licensee's president admitted to the officer that they had been open every day since the license expired, believing they had a current license (N.T. 7).

6. The next day Licensee's steward told the officer that they had obtained temporary authority, and LIAS confirmed this. The license was renewed on January 8, 2013 (N.T. 8).

7. This license expired on October 31, 2012, and Licensee did not have authority to dispense alcoholic beverages during the period November 1 through December 20, 2012 (Ex. B-3).

8. The person who asked the officer if she wanted a drink and then served it to her was young, in his early 20's. The officer was informed that this young man was slightly autistic, and that his duties did not include the service of alcoholic beverages. There was no impediment, such as late tax payments, which would have prevented timely renewal of the license (N.T. 11-12).

9. During the enforcement officer's conversation with Licensee's steward on December 21, 2012, the steward gave the officer information sufficient to allow her to conclude that the renewal application had been prepared and signed prior to the expiration of the license (N.T. 12-14).

10. The bottle of beer served to the officer was opened, and she put her hand on it. The five dollar bill was still on the bar when she went to the kitchen with the bartender to talk. The officer did not see the five dollar bill again, nor did she receive any change. The duplicate license posted in the premises was dated at about the time a renewal application would have been (N.T. 14-18).

11. On or about August 21, 2012, Licensee's steward prepared its renewal application, obtained Licensee's president's signature on it, obtained the necessary dual signature check, and put these items in the mail to the Board. The previous year there had been a problem getting the license – it was renewed by the Board but a duplicate copy had to be obtained (N.T. 19-36, Ex. L-1, L-2).

#### CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

In reality the only relevant findings of fact are numbers 1, 2, 3 and 7, above. I have made additional findings based on Licensee's testimony and exhibits because that evidence is relevant to its position that an administrative problem of some sort allowed these violations to occur. It may be that a higher authority will find these facts sufficient to excuse the violations shown by this evidence, but I am not in a position to do so.

Administrative law does not recognize defenses such as the one offered by Licensee. The sale of alcoholic beverages is a strictly controlled activity; it is lawful only if a licensed premises has a current liquor license, properly displayed. No excuses whatsoever are available to a person who sells alcoholic beverages without a current license. The same reasoning applies to a club which sells alcoholic beverages to a person who is not a member.

PRIOR RECORD:

Licensee has been licensed since January 27, 1999, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in the first count, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in the second count, any fine must be in the \$50.00 to \$1,000.00 range.

In this case a single act, the purchase by a nonmember liquor enforcement officer of a bottle of beer in the licensed premises, is a necessary basis for liability in both counts of the citation. I will therefore merge the two counts and impose a single penalty.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Ancient Order of Hibernians Div 61, License No. C-6344, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 1<sup>ST</sup> day of NOVEMBER, 2013.

  
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David L. Shenkle, J.

**NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.**

**WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.**

**THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.**

**Detach Here and Return Stub with Payment; Note Citation Number on Check**

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The fine must be paid by cashier's check, money order, or a check drawn on the business or trust account of an attorney licensed in Pennsylvania. **Personal and business checks are not acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation, to:

PLCB-Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661