

Mailing Date: JAN 16 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 13-0458
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-451713
	:	
	:	
v.	:	
	:	
	:	PLCB LID - 55730
PORTABELLAS, INC.	:	
T/A PORTABELLAS	:	PLCB LICENSE NO. R-AP-SS-EHF-15770
2495 E. HARRISBURG PIKE	:	
MIDDLETOWN, PA 17057-3941	:	

ADJUDICATION

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: FRANK C. SLUZIS, ESQUIRE**

BACKGROUND:

This proceeding arises out of a citation that was issued on March 14, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PORTABELLAS, INC., License Number R-AP-SS-EHF-15770 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 15.62(b) of the Liquor Control Board Regulations [40 Pa. Code §15.62(b)] in that on December 11, 12 and 13, 2012, Licensee, by its servants, agents or employees, posted notices on the licensed premises which stated or indicated that the licensed establishment was closed for a reason other than the suspension of the license.

The second count charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] in that on December 11, 12 and 13, 2012, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

The investigation which gave rise to the citation began on September 27, 2012 and was completed on January 22, 2013; and notice of the violation was sent to Licensee by Certified Mail on February 20, 2013. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 4, 2013 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. At the hearing, counsel for the Bureau of Enforcement moved to withdraw charges in Counts No. 1 and 2 for the date of December 12, 2012. There being no objection from counsel for the Licensee, the motion as granted (N.T. 14-15).

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1 AND 2

1. On September 28, 2012, this office issued an Adjudication at Citation No. 11-0306. The order in that Adjudication provided, inter alia, that Licensee's restaurant liquor license be suspended for a period of three days, beginning at 7:00 a.m. on Tuesday, December 11, 2012 and ending at 7:00 a.m. on Friday, December 14, 2012 (Administrative Notice, See N.T. Exhibit C-3).

2. On December 11, 2012, an officer of the Bureau arrived at the licensed premises at 6:50 p.m. He got out of his automobile and walked towards the front door. As the officer walked towards the front door he saw a white sign. The sign said, "After five long years, we'll take advantage of this opportunity to perform some building maintenance, deep cleaning and employee training. We thank you for your consideration." (N.T. 11-12).

3. The officer looked for a suspension placard. He walked along the sidewalk in the front of the building and looked at all of the windows along the front. He could find no suspension placard. The officer also looked through the windows on the side of the building and could see no suspension placard. He then departed the licensed premises at 7:00 p.m. (N.T. 12).

4. On December 13, 2012 at 1:50 a.m., the officer returned to the licensed premises and found it closed. Using a flashlight, the officer looked in all the windows of the licensed premises and could see no suspension placard posted (N.T. 16).

5. While inspecting the licensed premises on December 13, 2012 at 1:50 a.m., the officer noted that the sign on the front door was still present indicating that the premises was closed for repairs (N.T. 17).

6. The officer returned to the licensed premises on December 13, 2012 at 6:00 p.m. He was accompanied by his supervisor. The premises was closed as provided in the Order. The officers looked in all of the windows, searching for a suspension placard. The supervising officer found the suspension placard in a window on the second floor on the side of the building (N.T. 17-19).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

DISCUSSION:

COUNT 1

Licensee is clearly in violation of Section 15.62(b) of the Liquor Control Board Regulations [40 Pa. Code §15.62(b)].

Section 15.62(b) of the Liquor Control Board Regulations (supra) states as follows:

(b) During the suspension period, a licensee, its servants, agents or employees may not cause to be advertised in any manner, or place in, or about the premises, notice of any kind stating that the licensed establishment is closed for any reason other than the suspension of the license.

Clearly in this case the evidence in the record establishes that Licensee posted on the front door of the licensed premises a sign indicating that the licensed premises was closed for repairs, cleaning, etc. This clearly violates the Section of the Regulations quoted above.

In light of the foregoing, I conclude that Licensee violated Section 15.62(b) of the Liquor Control Board Regulations (supra) and the charge in Count 1 of the Citation is sustained.

COUNT 2

Licensee failed to post the Notice of Suspension Placard in a conspicuous place on the licensed premises and thus is in violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)].

Section 15.62(a) of the Liquor Control Board Regulations (supra) provides that a Notice of Suspension must be posted in a "...conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the licensed premises..."

In this case, although Licensee placed the Suspension Placard in a window, the window was on the side of the licensed premises and not in a place where it would be conspicuous or plainly visible. Consequently, I conclude that the Licensee's posting of the Suspension Placard was not in accordance with the provisions of Section 15.62(a) of the Liquor Control Board Regulations (*supra*) and the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since June 20, 2007, and has had three prior violations:

IN RE:

Citation No. 10-1142. Fine \$150.00.

1. Permitted smoking in a public place where smoking was prohibited. December 10, 2009, January 13, 22, 23, February 27, March 8, April 5 and 6, 2010.

Citation No. 10-2699. Fine \$250.00.

1. Loudspeakers. October 21, November 6 and 21, 2010.

Citation No. 11-0306. Fine \$1,000.00 and 3 days suspension.

1. Committed simple assault and engaged in criminal mischief. September 26, 2010.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$250.00 fine

Count 2 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee PORTABELLAS, INC., pay a fine of \$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.

Jurisdiction is retained.

Dated this 14TH day of January, 2014.



Daniel T. Flaherty, Jr., J.

an

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.

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 submit 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) to:

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

IN RE: CITATION NO. 13-0458
PORTABELLAS, INC.