

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

PENNSYLVANIA STATE	:	In re Citation No. 13-1054
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W09-458201
	:	
v.	:	PLCB LID No. 66058
	:	
PINE GROVE DINER, INC.	:	PLCB License No. R-SS-EHF-4355
T/A PINE GROVE DINER	:	
490 SUEDBERG RD.	:	
PINE GROVE, PA 17963-8830	:	

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: David S. Frew

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 29, 2013. The citation alleges that Licensee violated Section 471.1(g) of the Liquor Code, 47 P.S. §4-471.1(g), during the period February 28 through April 16, 2013, by failing to have your Board-approved manager complete RAMP training within 180 days of the Board’s approval of the appointment.

A hearing was held on January 15, 2014, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation, and to a summary of facts. Licensee argued that 47 P.S. §4-471.1(g) does not apply to it, because its appointment of Mr. Frew as manager predated the effective date of the statute.

FINDINGS OF FACT:

1. The Board approved the appointment of Licensee’s manager on August 31, 2012, and therefore he was required to complete owner/manager RAMP training within 180 days; i.e., by February 27, 2013. This was not done until July 9, 2013, 132 days late.
2. Records of the PLCB pertaining to this license include:
 - a. an Application for Transfer of License and Permit, PLCB-21, filed by Gooseberry Realty Corp., David S. Frew, President, on December 20, 2011.
 - b. an Application for Retail Liquor or Retail Dispenser License and Permits, PLCB-26, filed by Licensee, David S. Frew, Owner/President, and received by Licensing on December 20, 2011, which lists David S. Frew as Licensee’s manager.

- c. a Certificate of Approval & Letter of Authority, PLCB-1972T, addressed to Licensee and signed by the Board's Director of Regulatory Affairs on August 1, 2012.
- d. another letter signed by the Board's Director of Regulatory Affairs on August 31, 2012, granting temporary authority to operate for 30 days.
- e. a letter signed by the chief of the Board's Responsible Alcohol Management Program on August 31, 2012, advising Licensee of the requirements of Act 113 of 2011.
- f. a Certification of Completion, PLCB-1854T, signed by David S. Frew as the representative of Licensee and also of the former licensee on August 5, 2012 at 1:00 p.m., and stamped received by PLCB Licensing on August 29, 2012.
- g. another letter signed by the chief of the Board's Responsible Alcohol Management Program on November 29, 2012, reminding Licensee of the requirements of Act 113.

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The Act of December 22, 2011, P.L. 530, No. 113, §15, reads as follows:

Section 15. Section 471.1 of the act is amended by adding a subsection to read:

Section 471.1. Responsible Alcohol Management.--* * *

(g) Unless successfully completed prior to appointment, a manager appointed by any restaurant, eating place retail dispenser, hotel, club, limited distillery licensee or distributor licensee shall be required to complete the manager/owner training under subsection (c) within one hundred eighty days of approval of appointment by the board.

Section 22(1) of the Act provides that this provision shall take effect in 60 days, which would be February 20, 2012. Mr. Frew argues that the statute does not apply because Licensee appointed him to be its manager on December 20, 2011.

I do not agree. I read this statute as requiring compliance "within one hundred eighty days of approval of appointment by the board." As nearly as I can tell, that date was August 31, 2012. If the Board had approved the appointment of Mr. Frew prior to February 20, 2012, there might be some weight to this argument, although I doubt it. As it is, Mr. Frew clearly failed to obtain the required owner/manager training until July 9, 2013, 132 days late.

I realize that Mr. Frew has had prior experience in this business and no doubt believes that he did not need or benefit from the required training. This is beside the point. Our legislature has seen fit to regulate the beverage alcohol industry intensively, and licensees are not well-advised to ignore the requirements of the law on the basis that they know better.

PRIOR RECORD:

Licensee has been licensed since August 1, 2012, 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 in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Pine Grove Diner, Inc., t/a Pine Grove Diner, License No. R-SS-EHF-4355, shall pay a fine of two hundred dollars (\$200.00) 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 4TH day of MARCH, 2014.



David L. Shenkle, J.

jb

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

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

In re Citation No. 13-1054 Pine Grove Diner, Inc.