

Mailing Date: MAR 13 2014

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-1409
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-450244
v.	:	
	:	
MUMMAU INVESTMENTS I, INC.	:	PLCB LID No.: 23344
T/A O'HALLORAN IRISH PUB EATERY	:	
764-766 HIGH ST.	:	
LANCASTER, PA 17603-5527	:	PLCB License No.: H-AP-SS-1972

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

FOR LICENSEE: Anthony P. Schimaneck, Esquire

**BACKGROUND:**

This proceeding arises out of a citation, containing one count, that was issued on July 11, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Mummau Investments I, Inc. (Licensee).

The citation charges Licensee with violations of Section 404 of the Liquor Code [47 P.S. §4-404]. The charge is that Licensee, by your servants, agents, or employees, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license, on July 15, October 14, November 9, 11, 21, December 7, 2012; January 19, February 1, 2, 17, April 3 and 26, 2013.

Licensee has executed a Statement of Waiver, Admission and Authorization in which Licensee: admits to the violations charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of law, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior Adjudication history, and waives the right to appeal this Adjudication.

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

**FINDINGS OF FACT:**

1. On the twelve dates charged, Licensee's Manager was a member or participated with the Pagan Motorcycle Club (Club) or any of its members, beyond any incidental association which may have occurred as a result of the Club's members patronizing the licensed premises.

2. The Pennsylvania Liquor Control Board and Licensee entered into an Agreement (titled "Conditional Licensing Agreement") through which the Board approved of Licensee's Manager so long as Licensee insured the conditions described in Finding of Fact No. 1 would not occur.

**CONCLUSION(S) OF LAW:**

By violating the Agreement on the dates charged, Licensee's Manager was no longer a reputable person in violation of 40 Pa. Code §5.23(c).

**DISCUSSION:**

This matter presents several legal nuances of no small proportion. The citation alleges the described conduct violates Liquor Code Section 404.<sup>1</sup> I suspect the reference has its source in the Agreement's title, i.e. Conditional Licensing Agreement.

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<sup>1</sup> A statutory reference is never controlling. The "Conditional Licensing Agreement," Paragraph 4, indicates that Liquor Code Sections 102 [47 P.S. §1-102], 404, and 40 Pa. Code §5.23(c), all three of which relate to a Manager's reputation, create the authority for the Agreement. Perhaps I fail to read Liquor Code Sections 102 and 404 as they relate to a Manager's reputation correctly, but I found nothing therein on point. As I see it, 40 Pa. Code §5.23(c) is the sole basis for the Agreement.

First, the term “Conditional Licensing Agreement” is nowhere to be found in the Liquor Code. Rather, it is shop talk, referring to the PLCB’s authority to enter into agreements pursuant to Liquor Code Sections 404 and 470 [47 P.S. §4-470]. The Agreement under scrutiny has nothing to do with a license application or transfer.

The Agreement is actually grounded in the Board’s authority to evaluate a proposed Manager’s reputation as provided in 40 Pa. Code §5.23(c). The Agreement actually represents a conditional approval of a managerial appointment.

Without specific language and when read in its totality, the Agreement announces the Board’s conclusion that the proposed Manager is a person of good repute so long as Licensee insures the Manager complies with the condition in question. Licensee’s failure to comply renders the Manager ineligible because he no longer is a reputable person.

**PRIOR ADJUDICATION HISTORY:**

Licensee has been licensed since October 25, 1989, and has the following Adjudication history:

In Re Citation No.: 91-2027. Fine \$700.00.

1. Sold and/or served an increased volume of one drink without a corresponding and proportionate increase in the price of the drink on April 11 and June 6, 1991.
2. Used loudspeakers or devices whereby music can be heard outside on May 9, 1991.
3. Manager is employed by or engaged in another business without Board approval during the period January 7, 1991, and continuing to the present.

In Re Citation No.: 07-0288. Fine \$250.00.

Sold, furnished or gave liquor for consumption off premises on December 31, 2006.

**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)***

I adopt the jointly recommended penalty of a \$350.00 fine as Licensee has replaced the subject Manager.

**ORDER:**

***Imposition of Fine***

Licensee must pay a \$350.00 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 25<sup>TH</sup> day of February, 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.

### 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  
Harrisburg, PA 17110-9661