

Mailing Date: JUL 30 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1785
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-462357
	:	
LENEGHAN'S PUB INC.	:	
10002 SANDMEYER LN.	:	PLCB LID - 25567
PHILADELPHIA PA 19116-3502	:	
	:	
	:	PLCB License No. R-AP-SS-4424
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 3, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Leneghan's Pub, Inc., License Number R-AP-SS-4424 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 8, 2014, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation contains two counts.

The first count charges Licensee with violation of Section 437 of the Liquor Code, 47 P.S. §4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. §5.41, in that on May 29, 2013, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2009.

The second count charges Licensee with violation of Section 439(12) of the Liquor Code, 47 P.S. §4-493(12), in that on June 3 and 11, 2013, Licensee, by its servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on May 29, 2013 and ended on June 24, 2013. A notice of violation letter dated July 9, 2013 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on July 10, 2013. A citation dated September 3, 2013 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received at the licensed premises. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on February 25, 2014 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received at the licensed premises (N.T. 12-13 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement visited the licensed premises on Wednesday, May 29, 2013 at approximately 4:25 p.m. The premises was open and operating. There were four patrons seated at bars and one female bartender, later identified as the Licensee's wife (N.T. 7-8).

3. The undercover officer ordered one Bud Light draft beer paying \$2.00 in U.S. currency. The bartender poured the draft beer from the tap, which was properly marked Bud Light and gave it to the officer (N.T. 7-8).

4. After the transaction was completed, the officer identified himself and informed the bartender, Licensee's wife, that he was there to conduct an inspection of the premises, specifically to see if the health permit had been validated. The officer had received information from the Philadelphia Department of Licenses and Inspections, which indicate that the health permit had not been validated (N.T. 9).

5. At the end of the inspection, the officer asked for beer and liquor receipts, however, Ms. Leneghan, Licensee's wife, could not provide the beer and liquor receipts or a daily activity log. He also left a request for records at the premises. On the same day, the officer also spoke with the Licensee and informed him of the results of the routine inspection and that he had left the request for records with his wife (N.T. 10).

6. On Friday, May 31, 2013, the officer received a message from the Licensee informing him that he was unable to get the records that had been requested. The officer contacted Mr. Leneghan again on Monday, June 10, 2013 and again Mr. Leneghan informed the officer that he could not get in touch with his accountant in order to provide the requested records. Mr. Leneghan was asked to contact the officer on June 11, 2013, but did not. The officer waited until June 17, 2013 for the requested records and then proceeded to close his investigation (N.T. 10).

7. According to the records of the city of Philadelphia, the Licensee had no valid food license on May 29, 2013 and as of June 24, 2013, the license had not been renewed (Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On May 29, 2013, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2009, in violation of Section 437 of the Liquor Code, 47 P.S. §4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. §5.41.

Count No. 2 - On June 3 and 11, 2013, Licensee, by its servants, agents or employees, failed to keep on the licensed premises and/or provide an authorized employee of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business, in violation of Section 439(12) of the Liquor Code, 47 P.S. §4-493(12).

PRIOR RECORD:

Licensee has been licensed since June 5, 1990, and has a record of prior violations as follows:

In Re:

Citation No. 11-2163. \$1,000.00 fine.

1. Sales after the license expired and had not been renewed and/or validated.
November 1 and 9, 2011.

Citation No. 12-0870C. \$1,250.00 fine and R.A.M.P. Certification mandated.

1. Sales to a minor.
April 26, 2012.

Citation No. 12-1461. \$400.00 fine with thereafter conditions.

1. Operated the licensed establishment without a valid health permit or license.
May 1, 2009 through September 14, 2012.

Citation No. 13-1176. \$1,600.00 fine.

1. Failed to comply with the Order of the Administrative Law Judge mandating R.A.M.P. training.
March 18 through May 8, 2013.
2. Operated the licensed establishment without a valid health permit or license.
April 30, 2013.
3. Supplied false information on application for Restaurant Liquor License.
October 21, 2012.
4. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.
April 30, 2013.

DISCUSSION:

After a review of the prior record, the licensed premises will be assessed a fine of \$1,100.00 and a one day suspension continuing indefinitely until a copy of a current and valid health permit is received in our office. Licensee was duly warned regarding noncompliance in a recent prior Adjudication. Further, Licensee did not even appear at the hearing.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$750.00 and one day suspension continuing indefinitely until a current and valid health permit is received.
Count No. 2 - \$350.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Leneghan's Pub, Inc., License Number R-AP-SS-4424, pay a fine of One Thousand One Hundred Dollars (\$1,100.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Leneghan's Pub, Inc., License Number R-AP-SS-4424 (including all permits and Licensee Discount Card), be suspended indefinitely for at least one (1) day **BEGINNING** at 7:00 a.m. on Monday, October 20, 2014, and until Licensee submits a copy of a current and valid health permit.

Licensee is directed on Monday, October 20, 2014 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

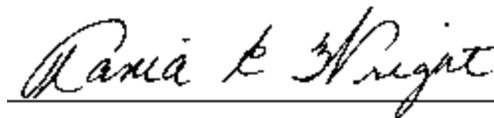
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

THE LICENSEE MAY NOT REOPEN THE LICENSED PREMISES UNTIL FURTHER ORDER FROM THE OFFICE OF ADMINISTRATIVE LAW JUDGE.

Jurisdiction of this matter is retained.

Dated this 23RD day of JULY, 2014.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

Leneghan's Pub, Inc.
In Re: Citation No. 13-1785

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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

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

The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the business or trust account of an attorney, who must be licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless they are certified by your bank.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

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

Credit/Debit Cards may be used: visit www.lcb.state.pa.us and look under LEGAL/Office of ALJ for instructions.

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