

Mailing Date: JUL 01 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 13-1823
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W08-459124
	:	
ROCCO IERINO, INC.	:	
403 LAWRENCE AVE.	:	PLCB LID No.: 57755
ELLWOOD CITY, PA 16117-1925	:	
	:	PLCB License No.: R-AP-SS-10023
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	:	
	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Nadia L. Vargo, Esquire  
**LICENSEE COUNSEL:** No appearance

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on September 9, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Rocco Ierino, Inc., License Number R-AP-SS-10023 (hereinafter Licensee).

The citation contains two counts.

The first count charges Licensee with violation of Sections 491(1), 492(2), 492(3) and 493(16) of the Liquor Code, [47 P.S. §§4-491(1), 4-492(2), 4-492(3) and 4-493(16)] in that on

June 1, 2013, Licensee, by its servants, agents or employees, sold alcoholic beverages without a license after the temporary authority granted to it by the Pennsylvania Liquor Control Board had expired on May 29, 2013.

The second count charges Licensee with violation of Section 404 of the Liquor Code, [47 P.S. §4-404] in that on June 1, 2013, Licensee, by its 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.

An administrative hearing was conducted on May 14, 2014 at 10:00 a.m., at 2084 Interchange Road, Erie, PA. The Bureau was represented by Nadia L. Vargo, Esquire. The hearing was held ex-parte.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced this investigation on March 26, 2013, and completed its investigation on July 23, 2013. (N. T. 12, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated August 13, 2013, which was sent by certified mail and was received August 15, 2013. (N. T. 10, Exhibit C-1, C-2)
3. This citation was issued on September 9, 2013, was sent by certified mail and was received on September 13, 2013. (N. T. 12, Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on April 9, 2014 by first class mail as well as certified mail. The aforementioned mailing of the notice of hearing was sent by certified mail and was returned undeliverable and unable to be forwarded on April 21, 2014. (Official Notice)

COUNTS ONE AND TWO

5. Licensee entered into a Conditional Licensing Agreement (CLA) with the Board on January 26, 2011.

7(b) states as follows: "Rocco shall employ at least one (1) security guard who will be present and working at the licensed premises on all Thursday, Friday and Saturday nights, from 9:00 p.m. until one half (1/2) hour after the premises has closed, and shall have at least two (2) security persons who will be present and working at the licensed premises on all Thursday evenings from 12:00 midnight until closing.

All security persons will be clothed in such a way as to make his/her status as security personnel readily apparent.”

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7(f). Rocco shall maintain camera surveillance, to include at least ten (10) cameras, of the interior and exterior of the licensed premises. The cameras shall be operating and input of all cameras will be recorded during all operating hours;

7(g). Rocco shall use a transaction scan device, as that term is defined in the Liquor Code, to scan the identification of all patrons purchasing alcoholic beverages, notwithstanding the fact that the patron may have had his or her identification scanned on a previous occasion.

6. Licensee’s temporary authority to operate pursuant to its liquor license expired on May 29, 2013. (N.T. p. 16, Exhibit C-5)
7. On Saturday, June 1, 2013 at 9:40 p.m., two Liquor Enforcement Officers entered Licensee’s premises in undercover capacities and observed a female bartender, later identified as Kelsey Mihalko, tending bar and rendering service to patrons. (N.T. pp. 13-14)
8. The Enforcement Officers were waited on by an individual referred to as “Uncle Bill” who twice scanned the identification of one of the Enforcement Officers indicating that he would then not need to scan the identification of the other officer. The Enforcement Officers then proceeded to purchase a 12-ounce bottle of Iron City Light Beer and a mixed drink consisting of Absolute Vodka and cranberry juice for a total of \$6.35 from “Uncle Bill.” (N.T. pp. 14-16)
9. During the course of this visit, the Enforcement Officers observed a monitor over the entrance to Licensee’s premises which displayed four separate security cameras feeds all of which were solid blue and not operational. (N. T. p. 18)
10. At 10:35 p.m., one of the Enforcement Officers purchased a six-pack consisting of 12-ounce bottles of Iron City Light Beer “to go” from Ms. Mihalko for \$8.00. (N. T. p. 18)
11. The Enforcement Officers noted that there were no employees wearing clothing identifying them as security personnel. (N. T. p. 15)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violations as charged in Counts one and two of this citation by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d

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653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

CONCLUSIONS OF LAW:

1. The notice requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On June 1, 2013, Licensee, by its servants, agents or employees, sold alcoholic beverages without a license after the temporary authority granted to it by the Pennsylvania Liquor Control Board had expired on May 29, 2013 in violation of Sections 491(1), 492(2), 492(3) and 493(16) of the Liquor Code, [47 P.S. §§4-491(1), 4-492(2), 4-492(3) and 4-493(16)].

3. On June 1, 2013, Licensee, by its 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 in violation of Section 404 of the Liquor Code, [47 P.S. §4-404].

PRIOR RECORD:

Licensee has been licensed since October 23, 2007, and has had three prior violations.

IN RE:

Citation No. 11-0280C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.  
January 18, 2011.

Citation No. 11-1488. Fine \$1,750.00.

1. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license.  
April 7, 11, April 28 through June 12, and June 20, 2011.
2. Sales to a visibly intoxicated person.  
April 11, 2011.

Citation No. 12-1344. Fine \$700.00 plus five-day suspension.

1. Failed to post signage as required by the Clean Indoor Air Act (CIAA).  
May 17, 18, June 14 and 28, 2012.
2. Smoked and or permitted smoking in a public place where smoking was prohibited.  
May 17, 18, June 14 and 28, 2012.
3. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license.  
June 14 and 28, 2012.
4. Sales to a minor.  
May 17, 2012.

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PENALTY:

As to Count One, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Relative to Count Two, 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.

The record discloses that Licensee's restaurant liquor license was revoked effective June 9, 2014 at Citation No. 12-1344.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of Rocco Ierino, License Number R-AP-SS-10023, be **REVOKED** immediately. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is expired, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been **REVOKED**. Licensee's right to renew this license is hereby CANCELLED.

Jurisdiction is retained to ensure compliance with this order.

Dated this 24<sup>TH</sup> day of JUNE, 2014.



Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

**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.**