

Mailing Date: JUN 02 2014

[Appeal](#)

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

PENNSYLVANIA STATE	:	In re Citation No. 13-1991
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-463163
	:	
v.	:	PLCB LID No. 1380
	:	
CIRCOLO MARIO BIANCO 3500-04	:	PLCB License No. C-2753
WHARTON ST.	:	
PHILADELPHIA, PA 19146	:	

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 1, 2013. There are five counts in the citation.

The first count alleges that Licensee violated §406(a)(1) of the Liquor Code, 47 P.S. §4406(a)(1), on July 14, 24 and 27, 2013, by selling alcoholic beverages to nonmembers.

The second count alleges that Licensee violated §§406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4-493(16), on July 27, 2013, by selling, furnishing and/or giving alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The third count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4499(a), on July 27, 2013, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the service of alcoholic beverages is required to cease.

The fourth count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4499(a), on July 27, 2013, by permitting patrons to possess alcoholic beverages in and/or remove them from that part of the premises used for the service of alcoholic beverages after 3:30 a.m.

The fifth count alleges that Licensee violated §§401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), on July 27, 2013, by selling, furnishing or giving liquor for consumption off premises.

A hearing was held on April 15, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. In the early morning hours of July 14, 2013, two liquor enforcement officers arrived at the licensed premises and requested entry. They were required to present identification. After being admitted, the two officers approached the bar. One of them (the investigating officer, who did not testify) purchased bottles of beer for both officers. The officer who testified did not observe the bartender ask the other officer any questions, nor was she required to present any form of identification. The officer who testified has never been a member of this club (N.T. 5-14).

2. On July 24, 2013, the investigating officer and another officer (who testified) arrived at the licensed premises at 9:55 p.m. The investigating officer purchased a bucket of ten-ounce bottles of beer, without question as to her membership in the club. The officer who testified has never been a member of this club (N.T. 15-19).

3. On July 27, 2013, the investigating officer and another officer (who testified) visited the licensed premises. They were required to pay a \$10 cover charge and to present identification. They were not questioned as to membership in the club. The officer who testified has never been a member of this club. The investigating officer purchased buckets of ten-ounce bottles of beer at 2:35, 2:55, and 3:45 a.m. At 4:23 a.m. the investigating officer went to the bathroom and the officer who testified ordered a drink containing vodka for her. The officer who testified paid for the drink when it was served from the money which had been placed on the bar by the investigating officer. When the investigating officer returned from the bathroom she took a sip of the drink, collected her money and left a tip, and then left the premises with the drink in her hand (N.T. 21-29).

CONCLUSIONS OF LAW:

The evidence did not prove that Licensee sold alcoholic beverages to nonmembers.

Licensee violated §§406(a)(4) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(4) and 4493(16), on July 27, 2013, by selling alcoholic beverages between 3:00 a.m. and 7:00 a.m.

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on July 27, 2013, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages by the required time.

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on July 27, 2013, by permitting patrons to possess alcoholic beverages in and remove them from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m.

Licensee violated §§401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4406(a)(1), on July 27, 2013, by selling liquor for consumption off premises.

DISCUSSION:

The first count must be dismissed because the investigating officer, who made all of the purchases which her companion officers witnessed, was not available to testify that she was not a member of this club. She was undergoing training at the state police academy, and would have become available in August, but no continuance or bifurcation was requested.

PRIOR RECORD:

Licensee has been licensed since March 23, 1936, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

In re Citation No. 91-0435. 7 days suspension. 1.
Minors frequenting
2. Sales to minors.

In re Citation No. 09-1852. \$750.00 fine.
1. Sales to nonmembers. February 28, 2009.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in the second count, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in the other counts, any fine must be in the \$50.00 to \$1,000.00 range. Penalties are assessed as follows:

Count No. 1 – DISMISSED.
Count No. 2 – a fine of \$1,000.00.
Count Nos. 3 & 4 (penalty merged) – a fine of \$500.00. Count
No. 5 – a fine of \$300.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Circolo Mario Bianco, License No. C2753, shall pay a fine of one thousand eight hundred dollars (\$1,800.00) 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 27TH day of MAY, 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. If you are paying by guaranteed check, please make it 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

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

In re Citation No. 13-1991
Circolo Mario Bianco