

Mailing Date: DEC 03 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 13-2211
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-465058
	:	
v.	:	PLCB LID No. 61439
	:	
LA TAMBORA CAFÉ RESTAURANT, INC.	:	PLCB License No. R-AP-SS-EHF-6312
738-740 ADAMS AVE.	:	
PHILADELPHIA, PA 19124-2318	:	

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 November 5, 2013. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-491(3), on February 24 and July 12, 2013, by obtaining liquor from sources other than Pennsylvania State Stores.

A hearing was held on September 23, 2014, in Plymouth Meeting, Pennsylvania.

**FINDINGS OF FACT:**

1. The Bureau investigated Licensee during the period July 26 through September 17, 2013, and sent it written notice of the results of the investigation on October 7, 2013 (N.T. 12-13, Exhibit B-1).
2. This citation was filed on November 5, 2013, and a copy of it was received by Licensee on November 7, 2013 (N.T. 13-14, Exhibit B-2).
3. On August 31, 2013, liquor enforcement officers visited the licensed premises in order to conduct a routine inspection. While reviewing business records, one of the officers asked Licensee's sole corporate officer if he could produce some beer and liquor receipts. He produced a folder containing several receipts. While going through them, the officer noticed that one of them was from Roger Wilco Beverage in Pennsauken, New Jersey (N.T. 6-7).
4. Another officer, who was assisting in the inspection, was reviewing various receipts in a filing cabinet in the premises' basement when he came across a receipt for the purchase of liquor from Total Wine & More of Claymont, Delaware (N.T. 21-22).

5. Licensee’s sole corporate officer stated to one of the liquor enforcement officers that he had made the purchases reflected in the two out-of-state receipts (N.T. 10).

6. The Bureau’s auditing unit calculated the loss to the Commonwealth (based on the difference between the retail price and the cost of the product, plus the 18% Emergency Tax and the 6% sales tax) as a result of this violation. The details are as follows<sup>1</sup>:

Where/When	Description	Price	Cost	Markup	Sales Tax	Markup + Tax	# of Units	Total Loss
DE 7-12-13	Remy Martin VSOP 750 mL	39.99	24.87	15.12	2.80	17.92	4	71.68
DE 7-12-13	Patron Silver 1.75 L	104.99	66.87	38.12	7.35	45.47	1	45.47
NJ 2-24-13	Johnny Walker Gold 1 L	109.99	69.76	40.23	7.70	47.93	36	1725.48
NJ 2-24-13	Chivas Regal 18 yr. 750 mL	69.99	44.16	25.83	4.90	30.73	12	368.76

Total Loss to Commonwealth .....\$2,211.39

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Licensee’s counsel pointed out during his cross-examination of the Bureau’s witnesses that they had no evidence any of the liquor described in the receipts was present in the licensed premises. Indeed, Licensee’s officer claimed during the inspection that he had purchased the liquor for use in another of his Pennsylvania licensed premises.

The statute upon which this citation is based makes it unlawful for “any person within this Commonwealth” to purchase liquor from any source other than a state store. Therefore it does not matter to me whether this liquor was purchased for one licensed premises or another one, or for the personal use of Licensee’s officer.

The mere presence in the licensed premises of these receipts, documenting out-of-state liquor purchases, is sufficient to sustain this citation. Whether the liquor involved still exists is not relevant to proof of this violation or the calculation of the loss to the Commonwealth.

PRIOR RECORD:

Licensee has been licensed since November 18, 2009, and has had four prior violations:

In re Citation No. 12-0208. \$1,650.00 fine.

1. Loudspeakers could be heard outside. November 18, 24, December 18 and 31, 2011.
2. Sales between 2:00 a.m. and 7:00 a.m. December 31, 2011.
3. Permitted patrons to possess alcoholic beverage after 2:30 a.m. December 31, 2011.

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<sup>1</sup> The price and cost are those of a Pennsylvania State Store, not the out-of-state stores, except that the Johnny Walker Gold is not sold in the one liter size, so the price for that product is as stated on the receipt, and the cost is proportionate to the Pennsylvania cost. The markup includes the 18% emergency tax. The sales tax is 7% in Philadelphia.

In re Citation No. 12-0825. 2 days suspension.

1. Sales between 2:00 a.m. and 7:00 a.m. March 31, 2012.

In re Citation No. 13-1165C. 3 days suspension and R.A.M.P. – certification mandated.

1. Sales to a minor. May 2, 2013.

In re Citation No. 13-1415.

1. Permitted smoking in a public place.  
November 2, 18, 2012, January 26, February 10, 14, March 9 and April 7, 2013.
2. Failed to post “no smoking” signs.  
November 2, 18, 2012, January 26, February 10, 14, March 9 and April 7, 2013.
3. Sales between 2:00 a.m. and 7:00 a.m. January 26, 2013.
4. Permitted patrons to possess alcoholic beverages after 2:30 a.m. January 26, 2013.
5. Sales on Sunday between 2:00 a.m. and 11:00 a.m. April 7, 2013.

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, La Tambora Café Restaurant, Inc., License No. R-AP-SS-EHF-6312, shall pay a fine of one hundred dollars (\$100.00) 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.

IT IS FURTHER ORDERED THAT Licensee shall reimburse the Commonwealth of Pennsylvania the sum of \$2,211.39 as compensation for the loss of profit and taxes resulting from this violation. Licensee shall make this payment by separate check payable to the Commonwealth of Pennsylvania, and mailed to the address stated below, within 20 days of the mailing date of this order. If Licensee fails in this regard, this order will be modified to include suspension or revocation of this license, with all its attendant privileges.

Dated this 19<sup>TH</sup> day of November, 2014.



David L. Shenkle, J.

**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**

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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](http://www.lcb.state.pa.us)  
and look under LEGAL/Office of ALJ for instructions.