

Mailing Date: FEB 25 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 13-2267
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W09-463668
	:	
v.	:	PLCB LID No. 46791
	:	
BROOKE DEREK, INC., T/A RILEY'S	:	PLCB License No. H-AP-SS-1074
4505 MAIN ST.	:	
WHITEHALL, PA 18052-1902	:	Lehigh County

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: Albert Charlie III

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 15, 2013. There are three counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-491(10), on July 3, 2013, by refilling liquor bottles.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-471, and the Crimes Code, 18 Pa. C.S. §5513, on July 3, 2013, by possessing or operating gambling devices or paraphernalia or permitting gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

The third count alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(2), and the Liquor Control Board regulations, 40 Pa. Code §§11.192 and 11.193, on July 10, 2013, by selling alcoholic beverages on credit.

A hearing was held on November 24, 2015 in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On July 3, 2014, liquor enforcement officers entered the licensed premises at 4:40 p.m. and identified themselves to a bartender. One of the officers saw a draw poker machine and two tabletop slot machines, which were operational, in the premises (N.T. 7-8).

2. On a board next to the kitchen an officer saw several slips of paper which he recognized as sales on credit, tabs for patrons (N.T. 8).

3. In the kitchen area an officer saw what he believed to be 1.5 milliliter bottles of liquor on top of a soda machine, where there was also a black funnel on a small metal tray. The officer's statement that the bottles were 1.5 milliliter bottles is erroneous, as there is no such size. Larger size liquor bottles contain 1.75 milliliters of liquid (N.T. 8-9, 26).

4. An officer inserted a dollar bill into the draw poker machine, and received four credits. He played one credit, and saw that the game took approximately three to five seconds for each play. The officers tried to "knock off" the remaining credits by holding down the numbers one, two, and five discard buttons at the same time for several seconds. This did not affect the credits displayed, so the officers played the credits down to zero (N.T. 10-11).

5. An officer played one of the tabletop games, the Queen Bee machine, by inserting a dollar into it and receiving twenty credits. He played one of the credits, which took three to five seconds. The officers found a copper wire behind the bar, hanging near the kitchen door. They inserted it in a small hole in the cabinet of the machine, and turned the machine off. When the machine was turned back on, the remaining credits had been cleared (N.T. 10-11, 52).

6. The officers returned to the draw poker machine, inserted a dollar bill, and received four credits. They tried a different combination of discard keys (one, four, and five) and found that when those keys were depressed for several seconds, the accumulated credits on the machine disappeared instantly (N.T. 12).

7. A woman who worked at the licensed premises for about ten weeks in the period April through July of 2013 complained to the Bureau about it. During her employment there were three video machines in the premises, and Licensee's bar manager instructed her on the method to clear accumulated credits from them. During her employment, Licensee made payouts on the machines, which the former employee witnessed, although she did not make payouts herself (N.T. 32-33).

8. Licensee's bar manager also taught the former employee how to refill smaller liquor bottles with liquor from larger bottles, always of the same brand of liquor. The former employee also saw that patrons were permitted to run a tab, for longer than a day. Unpaid tabs were kept on a wall in the entryway to the kitchen. The former employee believed that the tabs were for alcohol as well as food. There were slashes marked on the tabs to keep track of the number of drinks provided (N.T. 33-36, 43, 47, Exhibit C-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since October 24, 2000, and has had prior violations as follows:

In re Citation No. 01-1886. \$300.00 fine.

1. Loudspeakers could be heard outside. June 9, 2001.

In re Citation No. 01-2592. \$350.00 fine.

1. Loudspeakers could be heard outside. Sept. 4, 2001.

In re Citation No. 02-1623. \$1,500.00 fine.

1. Loudspeakers could be heard outside. May 27, 2002.
2. Permitted lewd, immoral or improper entertainment. June 13, 2002.

In re Citation No. 04-1791. \$2,050.00 fine.

1. Sold, furnished or gave liquor for consumption off premises.
May 22, June 3, July 16, 17 and August 21, 2004.
2. Loudspeakers could be heard outside. June 3, 2004.
3. Sales to a visibly intoxicated person. August 21, 2004.
4. Noisy and/or disorderly conduct. May 8, June 3, 13, July 11, 21 and 25, 2004.

In re Citation No. 06-2572. \$150.00 fine.

1. Failed to notify Board within 15 days of change of manager. January 28, 2003.

In re Citation No. 12-0308C. \$1,250.00 fine and RAMP certification mandated.

1. Sales to a minor. January 12, 2012.

In re Citation No. 12-0823. \$1,250.00 fine.

1. Sales to a visibly intoxicated person. February 18, 2012.

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. Since the second count is Licensee's third violation in a four-year period of a provision of the Crimes Code or a provision mentioned in 47 P.S. §4-471(b), the law requires that the penalty include license suspension or revocation. Penalties are assessed as follows:

- Count No. 1 – suspension of license for one day.
- Count No. 2 – suspension of license for two days.
- Count No. 3 – suspension of license for one day.

ORDER

THEREFORE, it is hereby ORDERED that the Hotel Liquor License of Licensee, Brooke Derek, Inc., t/a Riley's, License No. H-AP-SS-1074, shall be suspended for a period of four (4) days (including all permits and Licensee Discount Card) BEGINNING at 7:00 a.m. on Monday, April 4, 2016, and ENDING at 7:00 a.m. on Friday, April 8, 2016.

Licensee is directed on Monday, April 4, 2016, at 7:00 a.m. to place the enclosed notice of suspension (Form No. PLCB-1925 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 replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/ Fine Wine & Good Spirits stores.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Friday, April 8, 2016, at 7:00 a.m. to remove the suspension placard and return the license to its original wall location.

Dated this 22ND day of February, 2016.



David L. Shenle, 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.