

Mailing Date: APR 20 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-2573
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W09-464856
	:	
6900 M AND J INC.	:	
T/A TATTLETAILS TOO	:	PLCB LID - 56069
6900 NEW FALLS RD.	:	
BRISTOL TWP.	:	
LEVITTOWN PA 19057-2410	:	PLCB License No. R-AP-SS-EHF-19180
	:	
BUCKS COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ROY HARKAVY, ESQ.**

FOR THE LICENSEE:

**RICHARD JUMPER  
PRO SE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 3, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 6900 M and J, Inc., t/a Tattletails Too, License Number R-AP-SS-EHF-19180 (hereinafter "Licensee").

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t/a Tattletails Too  
In Re: Citation No. 13-2573

An Administrative hearing was held on Wednesday, May 21, 2014, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Section 406(g) of the Liquor Code, 47 P.S. §4-406(g), in that on September 15, 2013, Licensee, by its servants, agents or employes, discounted the price of alcoholic beverages for more than four (4) hours in a business day.

The second count charges Licensee with violation of Section 406(g) of the Liquor Code, 47 P.S. §4-406(g), in that on September 24, 2013, Licensee, by its servants, agents or employes, discounted the price of alcoholic beverages for Happy Hour in excess of fourteen hours in a business week.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. D.D. is an officer employed by the Bureau of Enforcement. D.D. conducted an investigation of the licensed premises pursuant to an advertisement received at the office complaining that the Licensee was conducting illegal happy hours. Upon reviewing the advertisement, the officer noted that on Sunday it was advertised that all drinks were half price from noon to midnight. The officer also noted that on Saturday from noon to 6:00 p.m. pitchers of beer were \$3.00. In addition, the Licensee, from Monday through Friday, offered a happy hour from 4:00 p.m. to 6:00 p.m., that is to say, two hours a day for \$2.00 domestic bottled beer. In addition, from 8:00 p.m. to 10:00 p.m. on Monday, they have half-priced offering, which included anything except shots of liquor; on Tuesday from 8:00 p.m. to 10:00 p.m., there was an offering of Bud Light for \$2.00; on Wednesday from 8:00 p.m. to 10:00 p.m., domestic beers were \$1.00 a bottle; on Thursday from 8:00 p.m. to 10:00 p.m., Miller Lights were \$2.00 (N.T. 11-12 and Exhibit B-3).

2. On Friday, July 19, 2013, the officer visited the licensed premises in an undercover capacity. The officer went to the premises at 10:46 p.m. after happy hour to establish the regular price of Licensee's drinks (N.T. 12-13).

3. The officer purchased a Miller Light beer for \$4.50 while on the premises. In addition, the officer paid \$5.00 for a rum and coke. After obtaining the prices, he left the premises at 11:46 p.m. (N.T. 12-15).

4. The officer made a visit to the premises in August of 2013, again establishing that the regular price of Miller Light beer was \$4.50 (N.T. 15).

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5. On Sunday, September 15, 2013, the officer visited the premises at 3:11 p.m. During the visit, the officer took a seat at the bar. He questioned the bartender as to any specials being conducted that day. She indicated that the drinks were half price all day long. During the visit, the officer purchased a Miller Light beer for \$2.25. During the visit, the officer purchased a rum and coke for \$2.50. The officer left the premises at 3:55 p.m. on Sunday, September 15, 2013 (N.T. 15-16).

6. Later in the evening at 7:20 p.m. on September 15, 2013, the officer returned to the premises. The officer again purchased a Miller Light beer for \$2.25 and a rum and coke mixed drink for \$2.50. As advertised, the drinks were half price (N.T. 16-17 and Exhibit B-3).

7. On September 24, 2013, the officer contacted the Licensee and spoke with Michael Jumper and advised him of the happy hour specials violations that he had observed. Michael Jumper asked him to speak to his brother and co-Licensee, Richard Jumper, Jr. He explained to him that the Sunday discounting practice was in excess of four hours. The officer then confirmed that all the advertised price listings were accurate and true as advertised (N.T. 18-19 and Exhibit B-3).

8. The officer also advised him that the Saturday special offering of pitchers of beer at \$3.00 from noon till 6:00 p.m. was a violation in that discounting all pitchers of beer could only be done for four hour periods. Mr. Jumper argued that these were their regular Saturday and Sunday prices (N.T. 19-20).

#### CONCLUSIONS OF LAW:

Count No. 1 - On September 15, 2013, Licensee, by its servants, agents or employes, discounted the price of alcoholic beverages for more than four (4) hours in a business day, in violation of Section 406(g) of the Liquor Code, 47 P.S. §4-406(g).

Count No. 2 - On September 24, 2013, Licensee, by its servants, agents or employes, discounted the price of alcoholic beverages for Happy Hour in excess of fourteen hours in a business week, in violation of Section 406(g) of the Liquor Code, 47 P.S. §4-406(g).

#### PRIOR RECORD:

Licensee has been licensed since January 28, 2008, and has no record of prior violations.

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DISCUSSION:

In accordance with Section 406(g) of the Liquor Code, 47 P.S. §4-406(g), licensees may hold happy hours up to four hours a day and up to fourteen hours per week, during which time licensees may discount the price of liquor. In addition, consistent with the provisions of 40 Pa. Code §13.102(a) and (b), licensees may also discount a specific registered brand of malt or brewed beverage, a type of wine, distilled spirits or a mixed drink per day or a portion thereof. No discounts may be given between the hours of twelve midnight and the lawful closing time.

Here, the Bureau officer verified that Licensee's discounting practice was consistent with their advertised prices, which exceeded fourteen hours per week. The advertised prices include \$3.00 pitchers of beer on Saturdays (noon-6:00 p.m.), half price drinks all day on Sunday (noon-midnight), \$2.00 drink specials on domestic beer Monday through Friday (4:00 p.m.-6:00 p.m.), half price on drinks - except shots - on Mondays (8:00 p.m.-10:00 p.m.), and \$1.00 for domestic bottles and drafts on Wednesdays (8:00 p.m.-10:00 p.m.). However, Licensee is permitted to offer a specific brand or drink daily, which could include its offering of \$2.00 Budweiser bottles, (if limited to a specific brand as opposed to all Budweiser products) on Tuesdays (8:00 p.m.-10:00 p.m.) and \$2.00 Miller Lites on Thursdays (8:00 p.m.-10:00 p.m.).

Licensee defended the allegations claiming that the Sunday offerings are those regularly offered on Sunday. While Licensee can change and fluctuate its regular prices, here the advertisement implies that it is a *special* or *discounted* offering, notwithstanding the fact that Licensee did not use these specific words - advertising the sale of drinks at half price is a discounted price offering. Licensee claims, but could not offer evidence of the same, that he was earlier told, some three years ago, by a Bureau officer that his discounting practices were in compliance with the law. A mere reading of Section 47 P.S. §4-406(g) clearly indicates that happy hours involving discounting liquor or malt or brewed beverages may not exceed fourteen hours per week. Prior to 2011, the regulations only permitted Licensee to discount alcoholic beverages two consecutive hours a day, as opposed to current provisions for four consecutive or nonconsecutive hours.

If Licensee has questions regarding the legality of its practices, it can always request and rely upon an Advisory Opinion from the Liquor Control Board, in the event that it is cited by the Bureau.

In that Licensee has no prior record, a moderate monetary penalty shall be imposed.

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.

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Therefore, penalties shall be assessed as follows:

Count No. 1 - \$150.00.  
Count No. 2 - \$150.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 6900 M and J, Inc., License Number R-AP-SS-EHF-19180, pay a fine of Three Hundred Dollars (\$300.00) 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.

**Jurisdiction of this matter is retained.**

Dated this 14<sup>TH</sup> day of APRIL, 2015.



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.

**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**

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

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