

Mailing Date: MAY 21 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-0023
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-471191
	:	
FLUELLEN, INC.	:	
1385 NARRAGANSETT ST.	:	PLCB LID - 34012
PHILADELPHIA, PA 19138-1911	:	
	:	
	:	PLCB License No. R-AP-SS-7746
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ANDREW R. BRITT, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 21, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Fluellen, Inc., License Number R-AP-SS-7746 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 16, 2014, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

At the close of hearing, the Court received a faxed Waiver from the Licensee. In that testimony was already taken, the Court did not accept the Waiver and instead bases the Adjudication on the evidence presented at the hearing.

The citation charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), in that during the period November 1 through December 2, 2013, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2013 and had not been renewed and/or validated.

FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premises which began on December 4, 2013 and ended on December 8, 2013. A notice of violation letter dated December 23, 2013 was sent to the licensed premises by certified mail, return receipt requested. That mailing was returned unclaimed. A citation dated January 21, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was returned to the sender. The citation was then sent by first class mail to the Licensee on March 15, 2014. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on May 28, 2014 by certified mail, return receipt requested, and by first class mail (N.T. 9-13 and Exhibits B-1 and B-2).

2. An officer from the Bureau, who has been employed with the Bureau for approximately three years, conducted an investigation of the licensed premises after receiving notice from the Pennsylvania Liquor Control Board that the license had expired. According to information from records from the Pennsylvania Liquor Control Board, the license had expired on October 31, 2013 and had not been renewed. The officer verified that temporary authority to operate had not been approved (N.T. 6-7).

3. On Monday, December 2, 2013, the officer contacted the Liquor Control Board and reviewed the file and then arrived at the licensed premises at approximately 1:30 p.m. The premises was open and operating. There were five patrons sitting at the bar and there were many drinks in front of them (N.T. 6-7).

4. The officer noted an African American female tending bar. The officer ordered a twelve ounce can of Coors Light beer. The bartender retrieved the twelve ounce can of Coors Light beer from a cooler behind the bar and placed it in front of the officer. The bartender charged the officer \$2.50 for the beer. The officer handed her five dollars, she rang the sale into the cash register and returned with \$2.50 in change (N.T. 7-8).

5. After the transaction was completed, the officer immediately identified himself and asked to speak to the manager. The bartender called the manager on her cell phone. Several minutes later, the Board approved manager, Julie Fluellen, arrived. Ms. Fluellen indicated she knew the license had expired and tried to obtain temporary authority to operate. The officer advised her that until she received it, she needed to cease all sales of alcoholic beverages. The officer took a written statement (N.T. 8).

6. The officer advised Ms. Fluellen that because she had an R-License, she could continue to serve food, but could not sell alcoholic beverages (N.T. 8).

7. An attestation from the Bureau indicates that the premises license expired on October 31, 2013 and had not been validated as of December 2, 2013 (N.T. 12-13 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

During the period November 1 through December 2, 2013, Licensee, by its servants, agents or employees, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2013 and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since May 4, 1994, and has a record of prior violations as follows:

In Re:

Citation No. 95-2998. \$600.00 fine and Verification conditions corrected. Verification not received and license suspended for a period of one day and thereafter until Verification received.

1. Not a bona fide restaurant in that they failed to provide food upon request.
2. Sales after the Restaurant Liquor License had expired and had not been renewed. (Dismissed by A.L.J.)
3. Operated without a valid health permit.

Citation No. 96-1833. \$300.00 fine.

1. Not a bona fide restaurant in that food items were insufficient.

Citation No. 96-2557. \$100.00 fine and one day suspension and thereafter until conditions corrected.

1. Not a bona fide restaurant in that they failed to provide food upon request.
2. Failed to keep records on the licensed premises.

Citation No. 99-1167. \$350.00 fine and one day suspension. Fine not paid and license suspended for a day and thereafter until fine paid.

1. Sold liquor for consumption off premises.  
October 18, December 2, 9, 1998, January 9, February 20, April 21, May 13 and June 12, 1999.

Citation No. 99-1541. \$250.00 fine, four days suspension and thereafter until restitution in the amount of \$209.18 paid.

1. Refilled liquor bottles.  
June 16, 1999.
2. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store.  
June 16, 1999.

Citation No. 02-0287. Four days suspension.

1. Fortified, adulterated and/or contaminated liquor.  
November 19, 2001.

Citation No. 05-1866. \$300.00 fine.

1. Used loudspeakers or devices whereby the sound of music could be heard outside.

Citation No. 13-0026. \$1,000.00 fine.

1. Sales after the license expired and had not been renewed and/or validated.  
November 1 through 30, 2012.

#### DISCUSSION:

The license expired on October 31, 2013. The Licensee had no authority to operate after that point. Licensee had a similar violation in 2012. Under the circumstances, a \$1,500.00 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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

Fluellen, Inc.  
In Re: Citation No. 14-0023

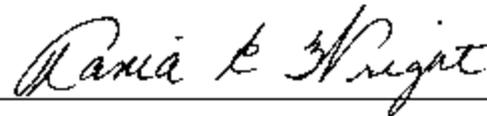
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Fluellen, Inc., License Number R-AP-SS-7746, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) 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 MAY, 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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Fluellen, Inc.  
In Re: Citation No. 14-0023

**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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