

Mailing Date: JAN 06 2015

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 14-0035
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-468863
v.	:	
	:	
THOREN, INC.	:	PLCB LID No.: 65144
T/A FOUR SEASONS RESTAURANT	:	
AND DINER	:	
5000 MILFORD RD.	:	PLCB License No.: R-AP-SS-EHF-8316
EAST STROUDSBURG, PA 18302-9246	:	
	:	
MONROE COUNTY	:	

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on January 17, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Thoren, Inc. (Licensee).

The first count charges Licensee with a violation of Section 404 of the Liquor Code [47 P.S. §4-404]. The charge is that, your licensed corporation was not the only one pecuniarily interested in the operation of the licensed business, during the period February 13 through December 18, 2013.

The second count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that Licensee, by your servants, agents, or employees, permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 9:00 a.m., when you did not possess an Extended Hours Food Permit, on October 27, 2013.

I presided at an evidentiary hearing on October 29, 2014 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Office of Administrative Law Judge sent a notice of hearing to Licensee's counsel on September 12, 2014, by certified mail, return receipt requested. The notice was received and signed for on September 15, 2014.

2. The Bureau began its investigation on October 11, 2013 and completed it on December 18, 2013. (Commonwealth Exhibit No. C-1, N.T. 12)

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on December 23, 2013. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 12)

Count No. 1

4. Licensee's President, Secretary/Treasurer, Mr. Castornia, filed a complaint with the Bureau of Liquor Control Enforcement advising that an unauthorized individual renewed the license and was operating the premises.

5. Pursuant to that complaint, on Wednesday, November 20, 2013, a Bureau Enforcement Officer entered the premises. He asked to speak to the owner and was directed to Mr. M. The Officer advised Mr. M. that there was an investigation underway for unlawful pecuniarily interest. The following day, Thursday, November 21, 2013, the Officer spoke with the manager of record, Ms. Koontz. The renewal application was prepared by an attorney without signature on behalf of licensee.¹

¹ I take Official Notice [40 Pa. Code §15.52] that the Renewal Application for license term expiring September 30, 2015, contains no signature. Rather, there are typed names in the signature blocks.

6. On December 18, 2013, the Bureau Enforcement Officer interviewed Mr. Castornia who indicated that he had nothing to do with the business. He also had nothing to do with the filing of the renewal. Mr. Castornia also indicated that he had not paid any of the bills, and was not receiving any income during the period referenced in the charge. (N.T. 24-33)

Count No. 2

7. A Bureau Enforcement Officer entered the premises at approximately 7:20 a.m. on October 27, 2013. Licensee was open and in operation selling food. (N.T. 14-19)

CONCLUSION(S) OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. I sustain the violations as charged.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since August 16, 2011, and has no prior Adjudications.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [47 P.S. §4-471] prescribes a penalty of license suspension, or revocation, or a fine of not less than \$50.00, or more than \$1,000.00, or both for the violations found herein.

Discretionary Component(s)

I adopt the Bureau's recommended penalty as follows:

Count No. 1 - \$500.00 fine.

Count No. 2 - \$250.00 fine.

I impose no more of a sanction because the Dime Bank has perfected a security interest in the business.

ORDER:

Imposition of Fine

Licensee must pay a \$750.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 22ND day of December, 2014.

A handwritten signature in cursive script that reads "Felix Thau". The signature is written in black ink and is positioned above a horizontal line.

Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. If you have not already done so, it may be prudent for you to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.

Detach Here and Return Stub with Payment – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or an attorney's check who is licensed to practice law in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check 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 scroll over LEGAL and then click on Office of ALJ for instructions..