

Mailing Date: SEP 16 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-0094
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-471082
	:	
THE CORNER FOODERY LLC	:	
1710-1712 SANSOM ST.	:	PLCB LID - 65177
PHILADELPHIA PA 19103-5227	:	
	:	
	:	PLCB License No. R-SS-8516
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 28, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against The Corner Foodery, LLC, License Number R-SS-8516 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 22, 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*. Mr. Dong Rim appeared, but is not an officer nor Board approved and was not permitted to act on behalf of the Licensee, but was called by the Bureau as a witness.

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 7, 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.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on November 25, 2013 and ended on December 16, 2013. A notice of violation letter dated January 2, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on January 6, 2014. A citation dated January 28, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on January 30, 2014. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on June 2, 2014 by certified mail, return receipt requested, and by first class mail (N.T. 16-19 and Exhibits B-1 and B-2).

2. On Saturday, December 7, 2013 at 10:10 p.m., an officer from the Bureau of Enforcement entered the licensed premises. The premises was open and operating with one male employee on duty behind the counter. The officer ordered and was served one sixteen ounce can of Yuengling Lager beer for \$2.50 by the employee. When the transaction was complete, the officer identified himself and asked to speak to the manager. He was referred to another employee who contacted Dong Rim by phone. The officer informed Mr. Rim that the premises' liquor license expired on October 31, 2013 and had not been renewed. He stated that he was not aware that the license had expired and that he would inform the premises' owner/manager, i.e. his sister. The officer informed Mr. Rim that the premises could not sell alcohol until authority had been obtained from the PLCB (N.T. 11-16).

3. After ending the call with Mr. Rim, the officer informed the employee in charge at the premises that no alcohol could be sold until the liquor license had been renewed. The employee removed a beer sign from outside the premises and closed the door. The officer exited the premises and maintained outside surveillance. Observing no patrons entering the premises, the officer left the vicinity at 10:55 p.m. (N.T. 15).

4. The Bureau reinspected the premises and was advised by Mrs. Baik, the owner/manager, that the license was renewed on December 11, 2013 (N.T. 15-16).

5. A Certification/Attestation dated December 30, 2013 from the PLCB states that the premises' liquor license expired on October 31, 2013, and that the premises did not possess authority to operate between November 1, and December 7, 2013.

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

During the period November 1 through December 7, 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 December 9, 2011, and has no record of prior violations.

DISCUSSION:

A witness testified that he is the manager of the premises and due to personal issues, he overlooked the renewal date. He states that the accountant was terminally ill and was not able to renew the license as was customary. Under the circumstances, 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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following

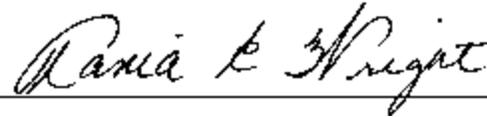
ORDER:

THEREFORE, it is hereby Ordered that Licensee, The Corner Foodery, LLC, License Number R-SS-8516, pay a fine of One Thousand Dollars (\$1,000.00) 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.

The Corner Foodery, LLC
In Re: Citation No. 14-0094

Jurisdiction of this matter is retained.

Dated this 9TH day of September, 2014.



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

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 and look under LEGAL/Office of ALJ for instructions.

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The Corner Foodery, LLC