

Mailing Date: NOV 04 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 14-0101
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W08-462719
	:	
MSTOLZ, LLC	:	
T/A SUGAR RAYS	:	PLCB LID No.: 57479
1301 STATE ST.	:	
ERIE, PA 16501-1915	:	PLCB License No.: R-AP-8064
	:	
ERIE COUNTY	:	
	:	
	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Nadia L. Vargo, Esquire
LICENSEE: No appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 31, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Mstolz, LLC, License Number R-AP-8064 (Hereinafter Licensee).

The citation contains four counts.

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The first count charges Licensee with violation of Section 491(5) of the Liquor Code, [47 P.S. §4-491(5)] in that on December 4, 2013, Licensee, by its servants, agents or employees, failed to break empty liquor bottles within twenty-four (24) hours.

The second count charges Licensee with violation of Section 467 of the Liquor Code, [47 P.S. §4-467] in that on December 4, 2013, Licensee, by its servants, agents or employees, failed to constantly and conspicuously expose temporary authority to operate license under a transparent substance on its licensed premises.

The third count charges Licensee with violation of Section 471(d) of the Liquor Code, [47 P.S. §4-471(d)] in that on December 4, 2013, Licensee, by its servants, agents or employees, failed to comply with the order of the Administrative Law Judge at Citation No. 12-1555C mandating continued compliance with the requirements of the Liquor Code pertaining to responsible alcohol management.

The fourth count charges Licensee with violation of Section 493(12) and 471.1(f) of the Liquor Code, [47 P.S. §§4-493(12) and 4-471.1(f)] in that Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding December 4, 2013.

An administrative hearing was conducted on Tuesday, September 23, 2014 at 9:00 a.m., at Homewood Suites, 2084 Interchange Road, Erie, Pa 16565. The Bureau was represented by Nadia L. Vargo, Esquire. The hearing was held ex-parte.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation on June 10, 2013, and completed its investigation on December 11, 2013. (N. T. 7, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated December 24, 2013, which was sent by certified and first class mail on December 24, 2013. The certified mail was returned by the postal service and was marked "unclaimed." The first class mail was not returned. (N. T. 20-21, Exhibit C-1, C-2)
3. This citation was issued on January 31, 2014, was sent by certified mail and was received on February 12, 2014. (N. T. 21-22, Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on August 8, 2014 by first class as well as certified mail. The first class mailing was not returned by the postal service. (N.T. 5-6, Official Notice).

COUNT ONE

5. On December 4, 2013, a Liquor Enforcement Officer, arrived at Licensee's premises and conducted a routine inspection in the presence of Licensee's LLC/Member/ President Matthew Stoltz. The Enforcement Officer scheduled this inspection with Mr. Stoltz on a previous occasion to allow Licensee sufficient time to organize his records. (N.T. 7)
6. Initially, the Enforcement Officer inspected a storage room where approximately 75 empty liquor bottles were stored along with current liquor stock and supplies. (N.T. 8)
7. Upon review of Licensee's liquor invoices, the Enforcement Officer determined that Licensee's liquor sales were inconsistent with the depletion of 75 liquor bottles within a 24 hour period. (N.T. 9)

COUNT TWO

8. This inspection further revealed that the only liquor license posted on the premises was the liquor license bearing an expiration of July 31, 2013. (N.T. 9-11)
9. The record discloses that Licensee was granted Temporary Authority to Operate by the Board on December 4, 2013. However, Mr. Stoltz was unable to locate the letter issued by the Board granting the temporary authority. (N.T. 9-10)

COUNTS THREE AND FOUR

10. In an Adjudication and Order issued by this Court on February 11, 2013 at Citation No. 12-1555C, Licensee was required to maintain RAMP certification for a period of one year commencing February 11, 2013. (N.T. 11)
11. Upon inquiry relative to Licensee's RAMP certification, Mr. Stolz was unable to produce a RAMP staff roster or its payroll records. (N.T. 12)
12. The only documentation provided to the Enforcement Officer by Mr. Stolz was a "work payroll sheet" which contained the names of five employees. The Enforcement Officer was able to verify that only two of the five employees listed completed RAMP server/seller training. (N.T. 12-14)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this Court concludes that the Bureau has established the violations as charged in Counts One through Four of this citation by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542

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A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

CONCLUSIONS OF LAW:

1. The notice requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On December 4, 2013, Licensee, by its servants, agents or employees, failed to break empty liquor bottles within twenty-four (24) hours, in violation of Section 491(5) of the Liquor Code, [47 P.S. §4-491(5)]
3. On December 4, 2013, Licensee, by its servants, agents or employees, failed to constantly and conspicuously expose temporary authority to operate its license under a transparent substance on its licensed premises in violation of Section 467 of the Liquor Code, [47 P.S. §4-467].
4. On December 4, 2013, Licensee, by its servants, agents or employees, failed to comply with the order of the Administrative Law Judge at Citation No. 12-1555C mandating continued compliance with the requirements of the Liquor Code pertaining to responsible alcohol management in violation of Section 471 (d) of the Liquor Code, [47 P.S. §4-471(d)]
5. Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding December 4, 2013 in violation of Section 493(12) and 471.1(f) of the Liquor Code, [47 P.S. §§4-493(12) and 4-471.1(f)].

PRIOR RECORD:

Licensee has been licensed since December 29, 2006, and has had two prior violations.

IN RE:

Citation No. 11-1986C. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a minor.
September 27, 2011.

Citation No. 12-1555C. Fine \$1,500.00 and RAMP compliance mandated.

1. Sales to a minor.
September 27, 2012.

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PENALTY:

Section 471 of the Liquor Code [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 violations of the types found in this case.

Licensee's failure to submit a Pre-Hearing Memorandum and its failure to appear at the Administrative hearing demonstrates a clear lack of interest in this liquor license. The record further discloses that this license is inactive.

For the foregoing reasons, the following penalties shall be imposed: Count One - \$150.00; Count Two - \$150.00; Count Three - \$300.00 and Count Four - \$300.00.

ORDER:

THEREFORE, it is hereby ordered that Mstolz, LLC, License Number R-AP-8064, pay a fine of \$900.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 28TH day of OCTOBER, 2014.



Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 CHIEF COUNSEL'S OFFICE 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 cashier's check, money order, or a check drawn on the business or trust account of an attorney licensed 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..

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