

Mailing Date: MAY 07 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 14-0131
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: W04-465462
v.	:	
	:	
DAVID B. COMFORT	:	PLCB LID No.: 16114
T/A COMFORT LOUNGE	:	
1187 JEFFERSON AVE.	:	PLCB License No.: R-AP-13419
WASHINGTON, PA 15301-2107	:	
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**BEFORE:** JUDGE RICHARD O'NEILL EARLEY  
**BLCE COUNSEL:** MICHAEL NICKLES, ESQUIRE  
**LICENSEE COUNSEL:** PRO SE

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on February 5, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against David B. Comfort, t/a Comfort Lounge, License Number R-AP-13419, (hereinafter Licensee).

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §1-102, alleging that during the period June 4 through December 16, 2013, Licensee's licensed premises was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient food items.

Licensee has executed a Statement of Admission, Waiver and Authorization in which Licensee: admits to the violation(s) charged in the citation, agrees that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior citation history, and waives the right to appeal this Adjudication.

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Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On December 16, 2013, a Liquor Enforcement Officer conducted a routine inspection of Licensee's premises and found no food in the premises.
2. No invoices for the purchase of food or sales receipts for the sale of food were found.
3. The Board-approved manager said that he has not offered food since June 4, 2013, and completed a witness statement reiterating this fact.

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

Licensee holds a restaurant license. A restaurant is defined under the Liquor Code as a business "habitually and principally used for the purpose of providing food for the public." 47 P.S. §1-102.<sup>1</sup> However, given that the Liquor Board routinely renews restaurant licenses for other licensees with Clean Indoor Air Act (CIAA) exceptions<sup>2</sup>, which imposes an upper limit on certain food sales<sup>3</sup>, the Board now seems to allow that low food sales may constitute "habitually and principally" providing food. I further note the Board does not currently require applicants for §1-102 Restaurant licenses, nor licensees seeking renewal, to make any representation or promise regarding future or past food sales. Without additional guidance from the Board, I must conclude the Liquor Code and the CIAA, read together, suggest a new, low threshold for being a §1-102 restaurant. Given the uncertainty for what it takes to be a §1-102 restaurant, I am generally inclined to take a reserved approach to penalizing Licensees cited for inadequate food.

PRIOR RECORD:

Licensee has been licensed since May 3, 1986, and has had five prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

IN RE:

Citation No. 90-0985. Fine \$600.00.

1. Sales to visibly intoxicated persons.

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<sup>1</sup> Requirements may vary for a Restaurant license granted under 47 P.S. §4-461(b.1)(4), but there is no evidence in the record that §4-461 is relevant in this case.

<sup>2</sup> 35 P.S. §637.1 et seq.

<sup>3</sup> Food for consumption on the premises must account for 20% or less of the restaurant licensee's total gross sales. CIAA, 35 P.S. §637.2

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Citation No. 95-0327. Fine \$1,200.00.

1. Sunday sales after 2:00 a.m.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.

Citation No. 00-0831. Fine \$400.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.

Citation No. 06-0591C. \$1,200.00.

1. Sales to a minor.

Citation No. 09-0535. Fine \$250.00.

1. Discounted the price of alcoholic beverages for more than 2 hours in a business day.  
December 2, 2008.

PENALTY:

The Liquor Code 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 type found in this case (47 P.S. §4-471).

In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violation(s) as charged in this citation, and has waived the right to a hearing and appeal.

For the foregoing reasons, a penalty shall be imposed in the amount of \$100.00.

ORDER:

THEREFORE, it is hereby ordered that David B. Comfort, t/a Comfort Lounge, License Number R-AP-13419, pay a fine of \$100.00 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.

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Jurisdiction is retained.

Dated this 23<sup>RD</sup> day of APRIL, 2014.



Richard O'Neill Earley, J.

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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.

Detach Here and Return Stub with Payment

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The fine must be paid by a check drawn on the business or trust account of your attorney, who must be licensed in this Commonwealth, a treasurer's check, cashier's check, or money order. **Personal and business checks are not acceptable unless they are certified by your bank.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation (please use the Return Stub when mailing payment or write your citation number on the check).

PLCB-Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661

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