

Mailing Date: DEC 03 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 14-0243
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-471135
	:	
v.	:	PLCB LID No. 64653
	:	
THE GRAINERY RESTAURANT GROUP, LLC	:	PLCB License No. R-AP-SS-15545
1111-1113 WALNUT ST. UNITS 1 & 2	:	
PHILADELPHIA, PA 19107-4918	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 18, 2014. There are four counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), during the periods November 1 through November 7 and November 9 through December 18, 2013, by selling alcoholic beverages after its restaurant liquor license expired on October 31, 2013, and had not been renewed and/or validated.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-471(a), during the period November 27 through December 18, 2013, by altering an expired temporary authority letter to show that it was current and valid.

The third count alleges that Licensee violated a Liquor Control Board Regulation, 40 Pa. Code §5.23(c), during the period June 27, 2012, through December 18, 2013, by failing to notify the Board within fifteen days of a change of manager.

The fourth count alleges that Licensee violated a Liquor Control Board Regulation, 40 Pa. Code §11.9(b), on November 29, 2013, by using its wholesale liquor purchase permit card illegally.

At the hearing scheduled for September 23, 2014, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period December 4, 2013, through January 6, 2014, and sent it written notice of the results on January 24, 2014 (N.T. 17-18, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on February 13, 2014 (N.T. 18, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on August 7, 2014.
4. A liquor enforcement officer consulted Board records, which showed that this license expired on October 31, 2013, and Licensee did not have authority to dispense alcoholic beverages during the period November 1 through December 18, 2013 (N.T. 5, Exhibit B-8).
5. On December 12, 2013, the officer visited the licensed premises, which was open and operating, at about 8:57 p.m. There were patrons in possession of alcoholic beverages. The officer purchased beer and paid for it with cash, which the bartender deposited in the cash register. After about ten minutes she identified herself to the bartender and asked to speak to the manager (N.T. 6).
6. The officer told the manager that their license was expired and they had to cease selling alcoholic beverages. The manager said he would call the owner to find out if they had temporary authority to operate. After speaking on the telephone with Licensee's president, the manager retrieved a temporary authority paper and showed it to the officer (N.T. 7).
7. The document shown to the officer was PLCB-1814 11/11, entitled "Temporary Authority License/Permit," filled out with Licensee's identifying information and dated November 29, 2013. The officer took a picture of the document with her cell phone and told the manager that they were able to operate, based on the document. (N.T. 8-9, Exhibit B-3).
8. In the office the next day the officer learned of the forgery, as Board records showed that no such temporary authority had been issued. On December 18, 2013, undercover Bureau officers entered the premises and purchased alcoholic beverages. Other officers then entered the premises to raid it. The manager presented the same document he had shown previously. Officers told him it was forged, and that he had no temporary authority (N.T. 9-10).
9. The officer asked the same manager she had met on December 12 about the Board-approved manager, Benjamin T. Miosi. The manager stated that he had never heard from this person, and that he had been the manager for about a year and a half. Among the business records examined during the raid was a previous temporary authority dated November 29, 2012, and a receipt from the Fine Wine and Good Spirits store at 2040 Market Street, Philadelphia, for purchases on November 29, 2013, totaling \$2,680.06 at wholesale prices for a different Licensee Identification Number (N.T. 10-15).
10. Licensee's business records show that it sold alcoholic beverages every day from November 1 through December 18, 2013, except on November 8, 2013 (Exhibit B-5).
11. A liquor enforcement supervisor advised one Matthew Schwartz of his *Miranda* rights on December 19, 2013. He waived his rights and stated that he learned from his attorney about a week before the license was due to expire, on October 31, 2013, that they had a tax issue which was going to prevent renewal of the license. He had lots of dinner reservations during November, so he

forged the old 2012 PLCB document. The manager did not know this. Mr. Schwartz was actually the owner of the premises, although it is listed in his wife's name (N.T. 22-24, Exhibit B-9).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since March 23, 2011, and has had prior violations as follows:

In re Citation No. 13-1442X. \$100.00 fine.

1. Bad checks for malt or brewed beverages. February 26, 2013.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in the first count any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in the other counts any fine must be in the \$50.00 to \$1,000.00 range. Penalties are assessed as follows:

- Count No. 1 – a fine of \$1,000.00.
- Count No. 2 – a fine of \$1,000.00.
- Count No. 3 – a fine of \$250.00.
- Count No. 4 – a fine of \$250.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, The Grainery Restaurant Group, LLC, License No. R-AP-SS-15545, shall pay a fine of two thousand five hundred dollars (\$2,500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 17TH day of November, 2014.



David L. Shenle, J.

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

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 trust account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** If you are paying by guaranteed check, please make it 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
and look under LEGAL/Office of ALJ for instructions.