

Mailing Date: SEP 29 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 14-0286
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-472421
	:	
v.	:	PLCB LID No. 55418
	:	
19135 VANDIKE ENTERPRISES, INC.	:	PLCB License No. R-AP-SS-953
7356-7358 FRANKFORD AVE.	:	
PHILADELPHIA, PA 19136-3829	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 25, 2014. There are four counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), on January 5, 2014, by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on January 5, 2014, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the service of alcoholic beverages is required to cease.

The third count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on January 5, 2014, by permitting patrons to possess alcoholic beverages in and/or remove them from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fourth count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on January 5, 2014, by permitting patrons to enter that portion of the premises habitually used for the service of alcohol between 2:30 a.m. and 7:00 a.m. without an extended hours food permit.

At the hearing scheduled for August 5, 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 January 4 through 14, 2014, and sent it written notice of the results on February 4, 2014 (N.T. 9-10, Exhibit B-1).
2. This citation was mailed to Licensee on February 25, 2014 (N.T. 10-11, Exhibit B-2).
3. A Notice of Hearing was mailed to Licensee on June 17, 2014.
4. On Sunday, January 5, 2014, liquor enforcement officers entered the licensed premises in an undercover capacity at 12:45 a.m. They saw two bartenders serving about 25 patrons. At 2:10 a.m. beer was served to a patron, and to another patron at 2:12 a.m. At 2:14 a.m. three shots of whiskey were served to a patron. Patrons received beer at 2:16 and 2:18 a.m. At 2:27 a.m. three “Jaeger Bombs” containing schnapps and an energy drink were served. Beer was served to other patrons at 2:28, 2:30, and 2:38 a.m. At this time the lights were turned on, but “last call” was not announced. An enforcement officer purchased beer at 2:39 a.m. Three shots of liquor were served to a patron at 2:43 a.m. At 2:44 and 2:50 a.m., beer was served to two patrons, and a bartender announced that they were finished serving beer for the evening. At 2:52 a.m. another patron received three Jaeger Bombs. At 2:55 a.m. a patron received beer. At 3:02 a.m. a doorman unlocked the door and allowed two women to enter. Additional beer sales occurred at 3:07 and 3:10 a.m. When the officers left the premises at 3:15 a.m. there were about thirty patrons remaining, most of them in possession of alcoholic beverages (N.T. 5-8).
5. Licensee did not have an Extended Hours – Food permit on this date (N.T. 11).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since November 1, 2005, and has had prior violations as follows:

In re Citation No. 08-0157. \$300.00 fine.

1. Unlimited alcoholic beverages for a fixed price. December 30, 2007.

In re Citation No. 08-0573. \$200.00 fine.

1. Loudspeakers could be heard outside. February 10, 2008.

In re Citation No. 09-0670. \$1,250.00 fine and R.A.M.P. – certification mandated.

1. September 21, 2008.

In re Citation No. 09-1053. \$300.00 fine.

1. Loudspeakers could be heard outside. March 14, 2009.

In re Citation No. 09-1542C. 2 days suspension.

1. Sales to a minor. May 28, 2009.

In re Citation No. 09-2648X. \$100.00 fine.

1. Bad checks for malt or brewed beverages. September 11 and 25, 2009.

In re Citation No. 10-0602. \$300.00 fine.

1. Failed to post a notice of suspension. March 1 and 2, 2010.

In re Citation No. 10-1029. \$400.00 fine.

1. Loudspeakers could be heard outside. March 6, 2010.

In re Citation No. 11-0056X. \$150.00 fine.

1. Bad checks for malt or brewed beverages. November 7, 2010.

In re Citation No. 11-0756X. \$200.00 fine.

1. Bad checks for malt or brewed beverages. February 25 and March 17, 2011.

In re Citation No. 11-1287X. \$250.00 fine.

1. Bad checks for malt or brewed beverages. March 17 and 18, 2011.

In re Citation No. 11-1941X. \$300.00 fine. License suspended 1 day for late payment.

1. Bad checks for malt or brewed beverages. August 24 and 25, 2011.

In re Citation No. 13-1437. \$500.00 fine, 3 day suspension and R.A.M.P. certification.

1. Sales to minors. April 27, 2013.
2. Minors frequenting. April 17 and 28, 2013.
3. Failed to require patrons to vacate the premises by the required time. March 30, 2013.
4. Permitted patrons to possess alcoholic beverages after 2:30 a.m. March 30, 2013.
5. Permitted patrons to enter the premises between 2:30 a.m. and 7:00 a.m. when the Licensee did not possess an extended hours food permit. March 30, 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 \$500.00.

Count No. 3 – a fine of \$500.00.

Count No. 4 – a fine of \$500.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 19135 Vandike Enterprises, Inc., License No. R-AP-SS-953, 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 September, 2014.



David L. Shenkle, J.

jb

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 business or 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.