

Mailing Date: JUN 08 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-0287C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-465236
	:	
THREE BEARS, LLC	:	
1512 SHUNK ST.	:	PLCB LID - 51315
PHILADELPHIA, PA 19145-4637	:	
	:	
	:	PLCB License No. R-AP-SS-7602
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 25, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Three Bears, LLC, License Number R-AP-SS-7602 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, October 15, 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*.

The citation contains five counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on August 22, 2013, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

The second count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), in that on October 19 and November 16, 2013, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on October 19, 2013, Licensee, by its servants, agents or employes, failed 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 required time for the cessation of the service of alcoholic beverages.

The fourth count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on October 19, 2013, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fifth count charges Licensee with violation of Section 493(28) of the Liquor Code, 47 P.S. §4-493(28), in that on October 19, 2013, Licensee, John T. DeRose, member, consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

COUNT NOS. 1, 2, 3, 4 AND 5

FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premises which began on July 20, 2013 and ended on January 17, 2014. A notice of violation letter dated February 4, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on February 5, 2014. A citation dated February 25, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on February 28, 2014. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on August 26, 2014 by certified mail, return receipt requested, and by first class mail. Despite that notice being sent, no one appeared on behalf of the Licensee (N.T. 17-21 and Exhibits B-1 and B-2).

2. An officer from the Bureau, who has been employed with the Bureau for approximately twenty-three years, visited the licensed premises as the result of an anonymous complaint alleging after hours sales, sales to minors and disorderly operations. As part of that investigation, the officer visited the premises on August 22, 2013 at approximately 7:35 p.m. in an undercover capacity (N.T. 5-6).

3. The officer entered the premises as part of an age compliance check. The officer entered the premises to ascertain whether it was safe for the Underage Buyer, who was a part of the compliance check program, to enter (N.T. 7).

4. The officer observed a female later identified as Mary May Balcita, an employee of the premises. The officer also noted there were three patrons on the premises and the premises was open and operating. On three previous visits to the premises, the officer determined that Ms. Balcita was the wife of the managing member, John DeRose (N.T. 7).

5. The officer determined that it was safe for the Underage Buyer to enter and at approximately 7:37 p.m., the Underage Buyer entered the premises after the officer texted other officers who were waiting outside. The Underage Buyer, F.F., entered the premises and took a seat at the bar, three seats to the right of the investigating officer. Ms. Balcita approached the Underage Buyer and asked him what he wanted to drink. At that time, the Underage Buyer ordered a twelve ounce bottle of Yuengling Lager, which Ms. Balcita provided to him without asking for identification or questioning him with regard to age. The Underage Buyer paid Ms. Balcita three dollars. The Underage Buyer took possession of the beer by placing his hand on the bottle and then departed the premises shortly thereafter leaving the beer (N.T. 8).

6. The investigating officer remained on the premises. At approximately 7:46 p.m., another officer from the Bureau entered the premises and notified the Licensee that they had served a minor participating in an Underage Buyer program. The investigating officer remained undercover (N.T. 8-9).

7. A second officer from the Bureau, who was a supervisor and had been so for fourteen years, was the supervisor on the underage minor detail on August 22, 2013. He provided verbal notification to the licensed premises that they served a minor as a part of the age compliance program. He spoke to Ms. Balcita (N.T. 24-25).

8. The minor had undergone training to be a part of the compliance program. On August 22, 2013, the Underage Buyer acted directly under the officer's supervision (N.T. 25-26).

9. The Bureau presented the J-Net file containing a photo and identifying information with regard to the Underage Buyer. It indicated that he was born April 17, 1994 and was under the age of twenty-one on August 22, 2013 (Exhibit B-5).

10. The Bureau sent a notice of non-compliance to the Licensee on August 23, 2013 notifying them in writing that they had sold to an underage buyer on August 22, 2013 (N.T. 20-21 and Exhibit B-3).

11. On Friday, October 18, 2013 at approximately 11:50 p.m., the officer went to the licensed premises. There were approximately fifteen patrons on the premises. The officer observed the Board approved manager, John DeRose, bartending along with an unknown male who the officer described as being twenty-five to thirty years of age, 5'11" and 280-300 pounds (N.T. 9).

12. The Board approved manager was in the back of the premises bartending. At approximately 1:45 a.m., during the early morning hours of Friday, October 19, 2013, Mr. DeRose asked one of the patrons to turn the window lights out and the patron complied. Mr. DeRose went behind the bar and began consuming a seven ounce bottle of Rolling Rock beer. At 2:00 a.m., there were six patrons present. There was no last call given. Around 2:00 a.m., the bartender who was assisting Mr. DeRose served a twelve ounce bottle of Coors Light beer to a patron at no charge. The bartender was at the bar and he served a whiskey at no charge (N.T. 10).

13. At 2:10 a.m., the bartender asked the undercover officer if she wanted a drink. At that time, she was drinking a twelve ounce bottle of Twisted Tea malt beverage. She answered, she did and she was served another Twisted Tea malt beverage at 2:10 a.m. and was charged \$4.00. The officer noted the time from a clock on the wall in a small hallway leading towards the kitchen and bathroom and verified the time with her cellular phone (N.T. 10-11).

14. At 2:15 a.m., the officer observed Mr. DeRose take a six pack of seven ounce bottles of Rolling Rock beer and place them in a plastic bag. He then took the bag out the side door of the premises. When he returned, he did not have the beer with him (N.T. 11-12).

15. The officer exited the premises at 2:40 a.m. with three patrons remaining. The undercover officer was directed by Mr. DeRose to use the side door which was unlocked for her. He then relocked the door as she left. Three patrons remained and were still in possession and consuming alcoholic beverages (N.T. 12).

16. On Saturday, November 16, 2013 at 12:50 a.m., the officer entered the licensed premises with eighteen patrons present. Mr. DeRose and Ms. Balcita were tending bar. Last call was given to the officer at 2:01 a.m. and the officer was then served a Twisted Tea malt beverage. She based the time on a clock on the premises, as well as her cellular phone (N.T. 13 and 16).

17. At approximately 2:05 a.m., Ms. Balcita went to the opposite end of the bar and began to mix up shakers for lemon drop shots made with vodka. She served them to four patrons seated at the opposite end of the bar. There was no charge for the service of those alcoholic beverages. At approximately 2:08 a.m., Ms. Balcita poured four shots of Grey Goose vodka. She gave drinks to the patrons who had the previous shots and she drank one as well. The officer did note Ms. Balcita ring up \$14.00 on the cash register, but she did not see any money being placed in the register (N.T. 13-14).

18. The officer left the premises at 2:15 a.m. with four patrons remaining (N.T. 15).

19. The certified records of the Liquor Control Board indicated that John DeRose is the manager of the limited liability corporation and that the premises did not maintain a valid extended hours permit on October 19, 2013 (Exhibit B-4).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On August 22, 2013, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

Count No. 2 - On October 19 and November 16, 2013, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16).

Count No. 3 - On October 19, 2013, Licensee, by its servants, agents or employes, failed 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 required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a).

Count No. 4 - On October 19, 2013, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a).

Count No. 5 - On October 19, 2013, Licensee, John T. DeRose, member, consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages, in violation of Section 493(28) of the Liquor Code, 47 P.S. §4-493(28).

PRIOR RECORD:

Licensee has been licensed since July 23, 2003, and has a record of prior violations as follows:

In Re:

Citation No. 05-0935. \$100.00 fine.

1. Operated the licensed establishment without a valid health permit or license.

Citation No. 11-0511. \$1,250.00 fine. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Sales after the license expired and had not been renewed and/or validated.
March 2, 2011.

Citation No. 12-0387. \$1,500.00 fine.

1. Sales after the license expired and had not been renewed and/or validated.
December 3, 2011.

DISCUSSION:

The Licensee, despite notice of hearing, failed to appear to contest the cited charges. The Licensee is charged with a number of violations which include sales to minors, after hour sales, patrons remaining on the premises and patrons in possession of alcoholic beverages after hours. In addition, the Licensee consumed alcoholic beverages while tending bar. In fact there appeared to be some sort of ritual at the end of the night, where the bartenders would have a drink with what were seemingly patrons on the licensed premises after the time for closing and cessation of sales of alcoholic beverages.

It is noted that the premises was licensed July 23, 2003 and has two previous violations for sales after the license expired. Under the circumstances, in addition to the monetary penalties, a period of suspension is mandated on each of the enhanced penalty violations.

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 \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count Nos. 3, 4 and 5 of this case.

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 Count Nos. 1 and 2 of this case.

Three Bears, LLC
In Re: Citation No. 14-0287C

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,000.00 and one day suspension.
Count No. 2 - One day suspension.
Count Nos. 3 and 4 (as merged) - \$250.00.
Count No. 5 - \$250.00.

Accordingly, we issue the following

ORDER:

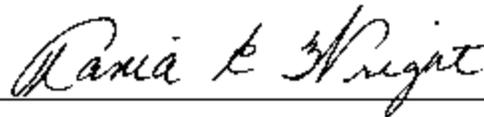
THEREFORE, it is hereby Ordered that Licensee, Three Bears, LLC, License Number R-AP-SS-7602, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Three Bears, LLC, License Number R-AP-SS-7602 (including all permits and Licensee Discount Card), be suspended for a period of two (2) days. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

Jurisdiction of this matter is retained.

Dated this 27TH day of MAY, 2015.



Tania E. Wright, J.

Three Bears, LLC
In Re: Citation No. 14-0287C

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.

mm

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 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.

In Re: Citation No. 14-0287C
Three Bears, LLC