

Mailing Date: MAY 09 2014

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : IN RE Citation No.: 14-0304  
LIQUOR CONTROL ENFORCEMENT :  
 : BLCE Incident No.: W04-467865  
v. :  
 :  
 :  
 : PLCB LID No.: 23949  
DAVID A. DOBICH :  
T/A TOWN BAR : PLCB License No.: R-AP-SS-9821  
800 FRANKLIN AVE. :  
ALIQUIPPA, PA 15001-3303 :  
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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 26, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against David A. Bobich, t/a Town Bar, License Number R-AP-SS-9821, (hereinafter Licensee).

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §1-102, alleging that on September 26, October 24, November 30, 2013 and January 8, 2014, licensee's premises was not a bona fide restaurant in that licensee, by its servants, agents or employees, maintained insufficient food items and/or failed to provide food upon request.

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 September 26, October 24, November 30, 2013, and January 8, 2014, a Liquor Enforcement Officer entered Licensee's premises and, on each visit, observed a bartender serving patrons. On those visits the Officer asked the bartender for a menu to order food, and was told that the premises does not sell food.
2. On January 8, 2014, the Officer spoke to the Board-approved manager and asked if he provides food for his patrons, and the manager stated he does not sell food and does not have an employee to prepare food. There was an insufficient supply of food on the premises.
3. Licensee has not sold food for several years, but it began to do so within the week of April 6, 2014.

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

Licensee holds a Restaurant license and a Sunday Sales permit from the Pennsylvania Liquor Control Board pursuant to 47 P.S. § 1-102 and 40 Pa. Code § 11.171(b), respectively. In addition, Licensee holds a Clean Indoor Air Act exception from the Pennsylvania Department of Health which permits Licensee to allow smoking on the premises. (The CIAA, 35 P.S. §§ 637.1 et seq.)

The license, permit and exception impose requirements that are in some tension with each other. 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. Certain restaurant licensees can qualify for a CIAA exception if, among other things, food for consumption on the premises accounts for 20% or less of the restaurant licensee's total gross sales. 35 P.S. §637.2. I have found no ruling from the Board or any court clarifying whether a licensee complying with the CIAA's food sales limits is, or is not, habitually and principally providing food for the public. However, I am not aware of any instance in which the Board has refused to renew a restaurant licensee's liquor license because it adhered to CIAA requirements in violation of the Liquor Code's mandate. Therefore, without additional guidance from the Board, I must conclude that the Liquor Code and the CIAA, read together, suggest a new, low threshold for being a § 1-102 restaurant licensee under the Liquor Code. However, even the most forgiving interpretation of the tension between §1-102 of the Liquor Code and §637.2 of the CIAA requires concluding a restaurant licensee must sell food to patrons.

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What is more, in this case Licensee also holds a Sunday Sales permit, which allows licensees to sell alcoholic beverages on Sundays only if the licensee can prove it generates relatively large sales of food and non-alcoholic beverages. Licensee's Sunday Sales permit requires that it generate 30% or more of its combined sales of food and alcohol from the sale of food and non-alcoholic beverages. 40 Pa. Code §11.171(b). While the CIAA requirements for low food sales, and the Sunday Sales requirements for more significant food sales are not mutually exclusive, the opposing requirements create a narrow range of acceptable food sales. However, here Licensee has ignored the basic requirements for possessing a restaurant license with Sunday Sales privileges by simply refusing to sell food for several years.

Given the low requirements for acting as a restaurant under the Liquor Code and the fact that the CIAA prohibits restaurant licensee with smoking exceptions from selling large amounts of food for on-premises consumption, I am generally inclined to take a reserved approach to penalizing licensees cited for inadequate food. However, I cannot ignore Licensee's long-standing abuse of the privilege to sell alcohol on Sundays by its failure to sell meaningful amounts of food.

PRIOR RECORD:

Licensee has been licensed since December 13, 1989, and has had two prior violations:

IN RE:

Citation No. 91-0597. Fine \$1,100.00.

1. Sales to a minor.

Citation No. 94-3032. Fine \$350.00.

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

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 \$300.00.

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ORDER:

THEREFORE, it is hereby ordered that David A. Bobich, t/a Town Bar, License Number R-AP-SS-9821, pay a fine of \$300.00 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.

Dated this 24<sup>TH</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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t/a Town Bar