

Mailing Date: OCT 17 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 14-0403
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-468349
	:	
v.	:	PLCB LID No. 59764
	:	
SMBW, INC.	:	PLCB License No. R-AP-SS-1162
5642-44 BOYER ST.	:	
PHILADELPHIA, PA 19138-1733	:	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 March 18, 2014. There are four counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-437, and Liquor Control Board Regulation 40 Pa. Code §5.41, during the period May 1, 2011, through November 21, 2013, by operating without a valid health permit, which expired on April 30, 2011.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §1-102, on November 18, 2013, on the basis that the licensed premises was not a *bona fide* restaurant because there were insufficient food items, eating utensils or dishes.

The third count alleges that Licensee violated the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), on November 18, 2013, by selling, furnishing or giving liquor for consumption off premises.

The fourth count alleges that Licensee violated the Liquor Code, 47 P.S. §4-491(10), on November 18, 2013, by fortifying, adulterating and/or contaminating liquor.

At the hearing scheduled for August 26, 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 September 25, 2013, through January 23, 2014, and sent it written notice of the results on February 11, 2014 (N.T. 12-13, Ex. B-1).
2. A copy of this citation was mailed to Licensee on March 18, 2014, and another copy was mailed on May 23, 2014, and received at the licensed premises (N.T. 14-15, Exhibit B-2).
3. A Notice of Hearing was mailed to Licensee on July 7, 2014.
4. On November 18, 2013, liquor enforcement officers saw a woman leaving the licensed premises with what appeared to be a mixed drink. One of them followed her outside and asked what she was drinking. The woman said the drink contained vodka and that she had purchased it in the licensed premises (N.T. 6-7).
5. The officers then identified themselves to the bartender and told her they were there to conduct a routine inspection. The bartender did not take this well. She told the officers that she did not know where any of the establishment's records were, nor did she have any phone numbers for any of Licensee's owners or a manager (N.T. 8).
6. The health permit on display had expired on April 30, 2011. The only food in the premises was about 15 cans of soup, which bore expiration dates in 2008 (N.T. 9-10).
7. Records of the Philadelphia Department of Licenses and Inspections show that Licensee did not have a valid food license during the period May 1, 2011, through November 21, 2013. The permit was renewed on November 22, 2013 (Exhibit B-3).
8. Licensee's manager admitted that they had been open and dispensing alcoholic beverages during the period in which the health permit was expired (N.T. 12).
9. The inspection revealed that seven bottles of liquor in the premises were contaminated with fruit flies (N.T. 18).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since April 2, 2008, and has had prior violations as follows:

In re Citation No. 09-1503. \$800 fine and verification of compliance. License suspended from June 14 to July 15, 2010, for noncompliance with ALJ orders.

1. Operated without a valid health permit or license. May 2, 2009.
2. Not a *bona fide* restaurant (insufficient food, eating utensils, dishes and glasses). May 2, 2009.
3. Loudspeakers could be heard outside. May 23 and 24, 2009.

In re Citation No. 10-1633. \$1,200.00 fine.

1. Sales when license suspended. June 14, 17 and July 13, 2010.
2. Failed to post notice of suspension. June 14, 17, 28 and July 13, 2010.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

Count No. 1 – a fine of \$300.00.

Count No. 2 – a fine of \$500.00.

Count No. 3 – a fine of \$200.00.

Count No. 4 – a fine of \$100.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, SMBW, Inc., License No. R-AP-SS-1162, shall pay a fine of one thousand one hundred dollars (\$1,100.00) 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.

IT IS FURTHER ORDERED that Licensee shall, within 20 days of the mailing date of this order, submit verification in the form attached hereto that the premises now maintains sufficient food, eating utensils and dishes on hand to qualify as a *bona fide* restaurant; and to submit a copy of a valid and current health permit. If Licensee fails to submit the verification and health permit within the time allowed, the penalty in this case will be modified to include a suspension of license.

Dated this 6<sup>TH</sup> day of October, 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**

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The fine must be paid by cashier's check, money order, or a check drawn on the 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](http://www.lcb.state.pa.us)  
and look under LEGAL/Office of ALJ for instructions.

**VERIFICATION**

Subject to the penalties contained in 18 Pa. C. S. §4904, relating to unsworn falsification to authorities, the undersigned officer verifies that the licensed premises now has sufficient food, utensils and dishes to accommodate people.

Licensee acknowledges that sufficient food, cooking equipment, utensils, and dishes are to be maintained at all times this license is in operation.

\_\_\_\_\_  
Corporate Officer's Signature

\_\_\_\_\_  
Date

Submit this verification to:

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