

Mailing Date: NOV 18 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 14-0500
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-471502
	:	
L. & J.'S SPORTS BAR, INC.	:	
T/A THE GOAL POST	:	PLCB LID No.: 33201
89 N. MORGANTOWN ST.	:	
FAIRCHANCE, PA 15436-1042	:	PLCB License No.: R-AP-SS-18595
	:	
FAYETTE COUNTY	:	
	:	
	:	
	:	

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BUREAU COUNSEL: EMILY GUSTAVE, ESQUIRE
LICENSEE: CHARLES L. CAPUTO, ESQUIRE

SUPPLEMENTAL ORDER

I issued an Order in this Citation, mailed on October 22, 2014, imposing a fine of \$3,000.00 against Licensee for violating an Order of an Administrative Law Judge and for two violations of the Clean Indoor Air Act (CIAA). Licensee has now asked that I reconsider my Order, and to that end, raises multiple arguments.

Initially, I note that reconsideration is a tool used to present a court with a correction to facts in the record that were misunderstood, or to point out legal errors. 1 Pa. Code § 35.241. Therefore, I will consider each point raised by Licensee as an argument for either a factual or legal error.

Ignoring Mitigating Arguments

Licensee's first point is that I committed an error of law by ignoring Licensee's mitigation arguments. However, Licensee has not specified any mitigation information that it provided that I failed to address. To the contrary, all mitigation arguments Licensee raised in its

letter dated September 16, 2014, are specifically addressed in the adjudication. Licensee suggests the fact that I imposed the “highest monetary penalty permitted by law” is evidence I ignored its mitigating arguments. However, this does not indicate Licensee’s arguments were ignored. The penalty reflects that Licensee committed serious violations, presented unpersuasive mitigation, and had a lengthy history of major violations. Therefore, based on the record, I cannot find an error of law related to Licensee’s mitigation arguments.

Excessive Penalty

Next, Licensee suggests that the penalty is excessive. In support of this contention Licensee points out that the penalty is more than three times the recommended penalty initially agreed to by the Bureau and Licensee’s counsel.

Administrative Law Judges are under no obligation to accept a recommended penalty. Thus, Licensee’s reliance on a recommended penalty as a form of test for the final penalty’s quality is unhelpful.

Each violation in this case is punishable by license revocation, a fine in the range of \$50.00 to \$1,000.00, a license suspension, or any combination of a fine and suspension. (47 P.S. §4-471). Licensee is aware of these penalty ranges because the penalties are specifically enumerated on the Waiver form submitted by Licensee. I imposed a penalty of \$1,000.00 for each count for a total penalty of \$3,000.00. This penalty is within the range permitted under the Liquor Code and is, therefore, not excessive.

However, Licensee suggests that the penalty does not “fit the crime” committed by Licensee. Specifically, Licensee argues that, “Such a severe penalty should be reserved for the harshest of cases, not one when the Licensee failed to obtain RAMP certification in a timely manner and had her granddaughter present at the licensed premises.”

First I must correct Licensee’s mischaracterization of the serious violations in this case. Licensee was not cited for failing to become RAMP certified, but for failure to comply with an Administrative Law Judge’s order. This is the administrative equivalent of contempt of court. As I noted in the adjudication, this was the fourth instance of this Licensee ignoring an Administrative Law Judge’s order. Licensee may very well be the only liquor licensee with this dubious distinction. Furthermore, Licensee’s manager made a conscious decision to permit her minor granddaughter into the CIAA-excepted portion of the premises in violation of the CIAA and the Liquor Code. One of the primary functions of licensees is to protect minors from the health risks associated with the operation of licensed premises. In this case, that includes the risks associated with smoking, which Licensee has elected to host. Licensee’s conduct demonstrates its repeated lack of care toward its obligations and justifies a severe punishment.¹

Second, while I have attempted to shape a penalty that “fits” these violations, and while I recognize that Licensee disagrees with my penalty, the question properly before me is whether

¹ As for Licensee’s CIAA signage violation, an elevated penalty is justifiable because of Licensee’s repeated demonstration of its disregard for its duties.

this penalty constitutes an error of law. As discussed above, it does not. As such, I must reject this argument.

Punishment for Prior Violations

Next, Licensee contends I erred by punishing Licensee for its prior violations rather than the charges pending before me. In particular, Licensee takes issue with my recitation of its citation history. Based on this, Licensee claims it is apparent I actually punished Licensee—again—for previously adjudicated violations. Of course, I am permitted to review the prior record of liquor licensees in shaping a suitable penalty for a citation. (47 PS § 4-471(c)). But I take Licensee's argument to mean it believes I acted unfairly by imposing a "large" penalty on it that Licensee contends is not typical for other licensees violating the same laws. As previously noted in this case, Licensee has repeatedly demonstrated it operates a troubled business with many lapses in its operations. It would not be fair to more conscientious licensees if this Licensee is punished like them. Therefore, I find that my consideration of Licensee's prior citation history does not constitute an error.

Consideration of Board Records

Licensee also argues that I erred as a matter of law by considering parts of the Board's records that neither party submitted. However, in this case Licensee specifically raised for my consideration the issue of who controlled Licensee's business and when. Because Licensee did not offer any support for its preferred interpretation of its business history, I was obligated to take administrative notice of Board records of documents filed by Licensee, and to glean what I could from our prior adjudications. The Board records in question reflect Licensee's business decisions including the roles of individuals and permissions granted them by Licensee. These documents are routinely reviewed by Administrative Law Judges in this court to identify parties relevant to pending litigation. I cannot find an error in reviewing permitted records in order to address an issue raised by Licensee.

I note that Licensee protests that these records may contain hearsay. However, Licensee did not specify any hearsay that was supposedly considered. Because I reviewed documents filed by Licensee with the Board (the contents of which would have to be viewed as admissions by Licensee) and facts admitted-to by Licensee in prior adjudications, I do not find any error.

Chilling Effect

Finally, Licensee warns that the penalty I imposed may have a chilling effect on future Waivers resulting in an increase in hearings. I take this to mean that I surprised Licensee by imposing a penalty different than the recommended penalty. As such, Licensee believes that in the future parties will lack confidence their recommended penalties will be honored and, thus, prefer hearings instead of Waivers, bogging down the court process.

However, I do not find the facts of this case establish that I am likely to encourage more litigation as a result of surprising the parties. Rather, I find that Licensee may have unreasonably

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relied on our judicial practice of attempting to accommodate recommendations. But in this case I specifically and repeatedly informed the parties I did not agree with the recommendations. I communicated this to the parties most recently in my September 16, 2014, letter where I stated the following:

However, I find the recommended penalty [\$950.00 and a one day suspension] to be wholly inadequate. As the parties are aware, [Administrative Law Judges] are not permitted to engage in negotiations with litigants about the ultimate dispositions or penalties in a case. 40 Pa. Code §15.21(b). Therefore, I am precluded from stating how I would shape a penalty in this case. I will say, instead, that based on the record before me, should I proceed on a Waiver and find violations as alleged, I would impose a penalty significantly exceeding that recommended by the Bureau. I will add, too, that I will not impose a revocation in this case if Licensee chooses to Waive the Citation.

(Earley, J., letter to parties dated September 16, 2014). In response, Licensee submitted its September 16, 2014, Waiver and letter requesting consideration of a penalty of \$1,000.00 and a two-day suspension. There, Licensee stated, "I understand that this is a recommendation only and that you are not bound by this recommendation." Thus, Licensee acknowledges that the imposition of a penalty is completely within the Administrative Law Judge's discretion (within statutory limits discussed, above). It is strange, therefore, to now hear Licensee suggest I erred by not adopting the recommendation. Furthermore, I cannot find any reasonable basis for Licensee to be surprised when I rejected its new recommendation that differed from its previous "wholly inadequate" one by only an additional \$50 and a one day suspension. In any event, I cannot find a legal error based on the mere possibility that a licensee may exercise its right to participate in a hearing.

Accordingly, I conclude Licensee has not established the existence of a factual or legal error and, therefore its motion for reconsideration must be denied.

ORDER:

AND NOW, Licensee's Request for Reconsideration is denied, and it is hereby ordered that L. & J.'s Sports Bar, Inc., t/a The Goal Post, pay a fine of \$3,000.00 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.

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Jurisdiction is retained.

Dated this 17TH day of November, 2014.



Richard O'Neill Earley, J.

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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.** Please make your guaranteed check 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

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