

Mailing Date: MAR 17 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 14-0887
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-474935
	:	
v.	:	
	:	
	:	PLCB LID - 64713
BAISY BOO, INC.	:	
T/A LOCHIEL HOTEL	:	PLCB LICENSE NO. H-AP-EHF-1432
903 SHANOIS ST.	:	
HARRISBURG, PA 17104-2506	:	
	:	
DAUPHIN COUNTY	:	

**ADJUDICATION**

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL PIETRZAK  
LICENSEE: JOSEPH SCIARRINO, PRESIDENT**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on May 8, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against BAISY BOO, INC., License Number H-AP-EHF-1432 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 474.1(a) of the Liquor Code [47 P.S. §4-474.1(a)] and Section 7.31(a) of the Liquor Control Board Regulations [40 Pa. Code §7.31(a)] in that Licensee, by its servants, agents or employees, failed to return its hotel liquor license and wholesale liquor purchase permit cards to the Board after the licensed establishment had not been in operation for a period of fifteen (15) consecutive days between February 28, 2013 and February 27, 2014.

The investigation which gave rise to the citation began on February 26, 2014 and was completed on April 15, 2014; and notice of the violation was sent to Licensee by Certified Mail on April 23, 2014. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 10, 2014 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On February 26, 2014, an officer of the Bureau spoke with Joseph Sciarrino, president of Licensee corporation. The purpose of the conversation was to arrange for an appointment so that the officer could come and inspect the licensed premises as well as his business records. The meeting was scheduled for February 27, 2014 at 1:00 p.m. (N.T. 11-12).

2. On February 27, 2014 at 1:00 p.m., the officer went to the licensed premises. Upon arrival, the officer noticed that the premises was covered with approximately four inches of snow that had not been plowed. The premises had cattle gates on both sides of the driveway. One of the cattle gates was locked and closed. The other was open. The officer had serious concerns about driving into the lot for fear of getting stuck. However, she pulled into the driveway and pulled to the back of the premises which was also snow covered (N.T. 12-13).

3. As the officer walked to the entrance to the licensed premises she also found that to be snow covered (N.T. 13).

4. Once inside the licensed premises, the officer met with Mr. Sciarrino. She identified herself to him by badge and identification (N.T. 13).

5. The officer observed that the premises had tables set up to look like patrons were anticipated. However, she observed a large pile of unidentified debris in the middle of the dining room floor (N.T. 13-14).

6. The officer had asked Mr. Sciarrino to provide records showing the profits and loss statements as well as beer and liquor invoices for the previous two years. Mr. Sciarrino informed her that he had no records as he had not been open. He said he had no sales records because he had no sales (N.T. 14).

7. The officer asked to see if any hours of operation were posted. She found that there were none (N.T. 14-15).

8. The officer requested to see a menu. Mr. Sciarrino showed her a chalkboard out on the front porch. There were three items on the chalkboard: Roasted Red Pepper appetizer, Pasta Mezzaluna and a Chicken Pasta dish. No other menu was provided for the officer to see (N.T. 15).

9. The officer went to the kitchen where she observed dusty, dented red cans of tomatoes, tomato paste and dusty spices. She found the work surfaces to be dusty. There were seven, one pound boxes of dry spaghetti, some broken in places with the expiration date of 2012 and 2013. The tomato paste had expired in 2012. There was not sufficient food to prepare the three items that were on the menu. There was a large box of food service pasta that was broken up and also dusty. There was no sign of recent use in the kitchen (N.T. 15-16).

10. The officer looked into a chest freezer where she found large bags of what appeared to be chicken that were undistinguishable. There were chicken breasts that were frozen. They had an expiration date of May, 2013. There were also three or four pieces of tilapia that were also frozen. She found everything else was frozen in a lump (N.T. 16).

11. While the officer was inspecting the contents of the chest freezer, Mr. Sciarrino became irate and was very close to the officer. He said she was “nuts” and became very loud. At that point she turned to him. She put her flashlight into his face and told him that she had had enough. At this point he backed away. The officer told him that the inspection was over.

12. On March 17, 2014, a second officer arrived at the licensed premises at 9:45 p.m. He found no activity taking place at the licensed premises (N.T. 29-31).

13. On April 11, 2014, the same officer again arrived at the licensed premises at 10:40 p.m. He again observed no activity taking place on the licensed premises (N.T. 31).

#### CONCLUSION OF LAW:

The charge in the citation must be **dismissed**.

#### DISCUSSION:

The Bureau has failed to produce enough evidence to show that Licensee did not operate for 15 consecutive days between February 28, 2013 and February 27, 2014.

In a liquor license case, the burden is on the Commonwealth to establish a violation by a clear preponderance of the evidence. *In re Omicron Enterprises*, 449 A.2d 857 (Pa.Cmwlt 1982).

The Bureau of Enforcement did not establish that Licensee has been closed for 15 consecutive days during a year by making only one visit to the licensed premises. In this case, although the premises was clearly closed, and appeared not to be in operation on that day, we cannot extrapolate from that one day visit that Licensee had not been open on any of the previous 14 days, or for any 15 day period previous during the year for which Licensee was charged with nonoperation (February 28, 2013 to February 27, 2014).

Based on the foregoing, I conclude that the Bureau has not met its burden and the charge in the citation must be dismissed.

ORDER

IT IS HEREBY ORDERED that Citation No. 14-0887 be **DISMISSED**.

Dated this 27<sup>TH</sup> day of February, 2015.

A handwritten signature in black ink, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

Daniel T. Flaherty, Jr., J.

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**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.**

**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 CHIEF COUNSEL'S OFFICE AT 717-783-9454.**