

Mailing Date: NOV 20 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-1580
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-481399
	:	
SMBW, INC.	:	
5642-44 BOYER ST.	:	PLCB LID - 59764
PHILADELPHIA, PA 19138-1733	:	
	:	
	:	PLCB License No. R-AP-SS-1162
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 26, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against SMBW, Inc., License Number R-AP-SS-1162 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, January 22, 2015, 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 charges Licensee with violation of Section 471.1(g) of the Liquor Code, 47 P.S. §4-471.1(g), in that during the period June 18 through July 14, 2014, Licensee, by its servants, agents or employes, failed to have the Board-approved manager complete RAMP training within 180 days of the Board's approval of the appointment.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on July 2, 2014 and ended on July 14, 2014. A notice of violation letter dated July 25, 2015 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation dated August 26, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on September 2, 2014. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on December 8, 2014 by certified mail, return receipt requested, and by first class mail. That mailing was returned (N.T. 7-9 and Exhibits B-1 and B-2).

2. An officer from the Bureau conducted an investigation of the licensed premises based on a complaint that the manager of the premises failed to complete training within a mandated period of time. The licensed premises had to be RAMP certified by June 17, 2014 (N.T. 5-6 and Exhibit B-3).

3. The officer visited the premises on July 8, 2014 to conduct a routine inspection. She spoke with the manager, Christina Spence, by telephone. She indicated that she had completed RAMP but could not give her the exact date. The officer accessed the PLCB records, which indicated that Ms. Spence had completed the owner/manager training in June of 2009, but that it had expired. That certification was for a different Licensee and she had not completed the training for the requirement of the Liquor Control Board (N.T. 7).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

During the period June 18 through July 14, 2014, Licensee, by its servants, agents or employes, failed to have the Board-approved manager complete RAMP training within 180 days of the Board's approval of the appointment, in violation of Section 471.1(g) of the Liquor Code, 47 P.S. §4-471.1(g).

PRIOR RECORD:

Licensee has been licensed since April 2, 2008, and has a record of prior violations as follows:

In Re:

Citation No. 09-1503. \$800.00 fine and Verification conditions corrected. Fine not paid, Verification conditions corrected not submitted and license suspended one day and thereafter until fine not paid and Verification conditions corrected submitted.

1. Operated the licensed establishment without a valid health permit or license.
May 2, 2009.
2. Not a bona fide restaurant in that food items, eating utensils, dishes and glasses were insufficient.
May 2, 2009.
3. Used loudspeakers or devices whereby music could be heard outside.
May 23 and 24, 2009.

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

1. Sales during a time when the license was suspended.
June 14, 17 and July 13, 2010.
2. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.
June 14, 17, 28 and July 13, 2010.

Citation No. 14-0403. \$1,100.00 fine and Verification conditions corrected. Fine not paid, Verification conditions corrected not submitted and license suspended one day and thereafter until fine not paid and Verification conditions corrected submitted.

1. Operated the licensed establishment without a valid health permit or license.
May 1, 2011 through November 21, 2013.
2. Not a bona fide restaurant in that food items, eating utensils and dishes were insufficient.
November 18, 2013.
3. Sold, furnished and/or gave liquor for consumption off premises.
November 18, 2013.
4. Fortified, adulterated and/or contaminated liquor.
November 18, 2013.

DISCUSSION:

Licensee failed to have the Board approved manager complete RAMP training within 180 days of the Board's approval of the appointment. At the time of the completion of the investigation, July 14, 2014, the manager had not completed that training. Under the circumstances, a \$200.00 penalty shall be imposed.

SMBW, Inc.
In Re: Citation No. 14-1580

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 this case.

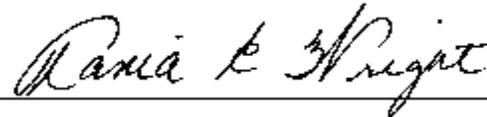
Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, SMBW, Inc., License Number R-AP-SS-1162, pay a fine of Two Hundred Dollars (\$200.00) 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.

Jurisdiction of this matter is retained.

Dated this 2ND day of November, 2015.



Tania E. Wright, J.

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.

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SMBW, Inc.
In Re: Citation No. 14-1580

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 business or trust 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

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