

Mailing Date: MAY 21 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-1742
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-482312
	:	
MULLEN'S TAVERN, INC.	:	
1720 W. MOYAMENSING AVE.	:	PLCB LID – 9994
PHILADELPHIA, PA 19145-4820	:	
	:	
	:	PLCB License No. R-AP-SS-1459
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 2, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Mullen's Tavern, Inc., License Number R-AP-SS-1459 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, April 16, 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 437 of the Liquor Code, 47 P.S. §4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, in that during the period May 1, 2013 through July 22, 2014, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2013.

FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premises which began on July 21, 2014 and ended on July 31, 2014. A notice of violation letter dated August 11, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on August 14, 2014. A citation dated September 2, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on February 27, 2015 by certified mail, return receipt requested, and by first class mail (N.T. 10-11 and Exhibits B-1 and B-2).

2. On Monday, July 21, 2014 at 2:25 p.m., an officer from the Bureau entered the licensed premises. The premises was open and operating. The officer identified herself to Donald Maddox, owner of the premises, and informed him a routine inspection would be conducted. During the course of the inspection, the officer observed the premises did not have a health permit posted. Mr. Maddox stated the premises had a valid health permit but the would have to contact his son in order to locate it. The officer arranged to return to the premises in order to view the premises' health permit (N.T. 5-7).

3. On Tuesday, July 22, 2014 at 2:35 p.m., the officer entered the licensed premises. She met with Mr. Maddox who produced a health permit which had expired on April 30, 2013. The health permit could not be renewed due to tax clearance issues. Mr. Maddox informed the officer he had entered into a payment plan and was informed he would be able to obtain a new health permit if he remained up to date with his payments. The officer informed Mr. Maddox the premises was not permitted to sell alcohol until a valid health permit had been obtained. Mr. Maddox agreed to provide a written statement acknowledging the licensed premises was open and selling alcohol every day since May 1, 2013. The officer exited the licensed premises at 1:40 p.m. (N.T. 8-9 and Exhibit B-3).

4. On August 8, 2014, the officer ordered a Certification/Attestation from Licensing and Inspection stating that the premises' health permit expired on April 30, 2013, and the premises did not possess a valid health permit between May 1, 2013, and July 22, 2014 (N.T. 12-15 and Exhibit B-4).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

During the period May 1, 2013 through July 22, 2014, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2013, in violation of Section 437 of the Liquor Code, 47 P.S. §4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41.

PRIOR RECORD:

Licensee has been licensed since October 17, 1961, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

In Re:

Citation No. 94-2401. \$350.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.
June 17 and September 10, 1994.

Citation No. 95-1666. \$1,000.00 fine.

1. Sales to minors.
May 19, 1995.
2. Minors frequenting.
May 19, 1995.

Citation No. 97-0325. \$50.00 fine and three days suspension.

1. Sold liquor for consumption off premises.
November 9, 1996.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.
November 13, 1996, January 16 and 17, 1997.

Citation No. 98-1444. Three days suspension.

1. Sales to a minor.
2. Minor frequenting.

Mullen's Tavern, Inc.
In Re: Citation No. 14-1742

Citation No. 00-2167. \$600.00 fine and one day suspension.
Licensee's request for reconsideration modified penalty to three days suspension.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling on the licensed premises.

Citation No. 09-2729. \$250.00 fine.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
September 17, 23 and October 10, 2009.
2. Failed to post signage required by the Clean Indoor Air Act.
September 17, 23 and October 10, 2009.

Citation No. 11-1729. \$500.00 fine.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
August 11 and 20, 2011.
2. Failed to post signage as required by the Clean Indoor Air Worker Protection Law.
August 11 and 20, 2011.

DISCUSSION:

The Liquor Code and its Regulations mandate that alcoholic beverages cannot be dispensed in licensed premises without a current and valid health permit. Further, the health permit must be properly posted on the premises. Under the circumstances, a moderate monetary penalty shall be imposed. Licensee will also be required to submit a copy of a current and valid health permit.

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

Mullen's Tavern, Inc.
In Re: Citation No. 14-1742

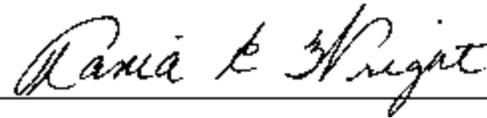
ORDER:

THEREFORE, it is hereby Ordered that Licensee, Mullen's Tavern, Inc., License Number R-AP-SS-1459, 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.

IT IS ALSO ORDERED that Licensee, Mullen's Tavern, Inc., License Number R-AP-SS-1459, submit a copy of a current and valid health permit within twenty (20) days from the mailing date of this Adjudication. If said documentation is not submitted within twenty (20) days from the mailing date of this Adjudication, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

Jurisdiction of this matter is retained.

Dated this 14TH day of MAY, 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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Mullen's Tavern, Inc.
In Re: Citation No. 14-1742

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 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

Credit/Debit Cards may be used: visit www.lcb.state.pa.us and look under LEGAL/Office of ALJ for instructions.

In Re: Citation No. 14-1742
Mullen's Tavern, Inc.