

Mailing Date: JUN 08 2015

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

PENNSYLVANIA STATE	:	In re Citation No. 14-1804
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-482604
	:	
v.	:	PLCB LID No. 45584
	:	
5708 K & T, INC.	:	PLCB License No. R-SS-1492
5708 GERMANTOWN AVE.	:	
PHILADELPHIA, PA 19144-2137	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 16, 2014. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-404, during the period September 12, 2012, through August 4, 2014, by failing to adhere to the conditions of an agreement with the Board placing additional restrictions on the subject license.

A hearing was held on February 10, 2015 in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. In response to a complaint, an officer of the Bureau examined Licensee's history, thus becoming aware of a Conditional Licensing Agreement (CLA) signed on behalf of Licensee by Sirk Taing, President, on November 3, 2011, and on behalf of the PLCB by Faith S. Diehl, Esquire, on November 9, 2011. The agreement recites as its predicate the fact that Licensee had applied for renewal of this license for the term effective November 1, 2010, that the Bureau of Licensing objected to the renewal based on three adjudicated citations, approximately nineteen "incidents of disturbance at or immediately adjacent to the premises and because the application was untimely filed. The incidents included, but were not limited to, drug activity, a homicide, public drunkenness, and disorderly operations." (N.T. 6, Exhibit B-3).

2. The CLA states that Licensee (designated "5708" in the agreement) "wishes to renew the license and proffers that many of the alleged problems with its operation will be alleviated if the conditions contained herein are imposed upon the license as well as the premises." In pertinent part, the substantive provisions of the CLA are found in paragraph 6, which provides:

....

c. 5708 shall employ at least one (1) security guard or bouncer who will be present and working at the licensed premises at all times. Said security guard or bouncer shall conduct pat-down searches of all persons entering the licensed premises;

....

e. 5708 shall require at least one (1) employee to patrol the exterior of the premises at least once per hour every night of operation from 9:00 p.m. until all patrons have vacated the premises. A record of the patrols, including the time, date and personnel included in each patrol shall be retained as a business record...

f. 5708 shall post and maintain a minimum of four (4) signs, prominently displayed, prohibiting the possession and use of illegal drugs. Each sign will be at least two (2) feet by two (2) feet in size...

--(Exhibit B-3).

3. On August 4, 2014, liquor enforcement officers entered the licensed premises, dressed in plain clothes. There was no one stopping them from entering, and they were not patted down. They asked Licensee's vice president about the business record required concerning the exterior patrols. She showed them a notebook in which this information had been kept, but the officers saw that the last entry in the book was on September 11, 2012. The officers did not observe any signs in the premises prohibiting the possession and use of illegal drugs. The only sign they saw was one which prohibited patrons from leaving the premises with an open container (N.T. 6-9).

4. The licensed premises is set up as what the Bureau defines as a "six pack shop." The primary business is selling beer "to go." On entering, one sees the counter where beer is sold on the right; in the back there are some tables and chairs, which is where the officers met with Licensee's vice president. The officers were concerned only with the complaint they had received, which was not substantiated. This was not a routine inspection, as a full routine inspection had recently been done by another officer (N.T 10-14).

5. Licensee's vice president attributed the necessity for the CLA to her and her husband's upstairs tenant, Super Supreme Corp., LID 38561. The Board refused to renew that license, and Board records state that its status became "history" as of May 5, 2014. Super Supreme Corp. was licensed on July 1, 1996, and had prior violations as follows:

In re Citation No. 99-1911. \$1,500.00 fine.

1. Loudspeakers could be heard outside. March 1 and April 2, 1999.
2. Permitted lewd, immoral or improper entertainment. April 2, 1999.
3. Permitted entertainers to contact or associate with patrons. April 2, 1999.

In re Citation No. 01-0731. \$3,000.00 fine and 3 days suspension.

1. Aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of your licensed premises in the furtherance of the traffic in, or use of, a controlled substance. March 10, 2001.
2. Loudspeakers could be heard outside. March 10, 2001.
3. Insufficient illumination. March 10, 2001.

In re Citation No. 03-0191. \$500.00 fine.

1. Failed to post a notice of suspension. January 13 and 15, 2003.

In re Citation No. 04-2011. \$1,500.00 fine.

1. Permitted patrons to possess alcoholic beverages after 2:30 a.m. September 18, 2004.
2. Sales between 2:00 a.m. and 7:00 a.m. September 18, 2004.

In re Citation No. 05-0748. \$2,000.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m. March 5, 2005.

In re Citation No. 06-0326. 1 day suspension.

1. Failed to post notice of suspension. January 9, 2006.

In re Citation No. 06-2705. \$200.00 fine.

1. Failed to post notice of suspension. October 23, 2006.

In re Citation No. 08-2301. \$2,800.00 fine and 1 day suspension.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m. August 17, 2008.
2. Failed to require patrons to vacate the premises by the required time. August 17, 2008.
3. Permitted patrons to possess alcoholic beverages after 2:30 a.m. August 17, 2008.

In re Citation No. 09-1751. \$600.00 fine.

1. Operated without a valid health permit. May 16, 1009.
2. False information on liquor license application. December 15, 2008.

--(N.T. 16-17, PLCB Records)

6. Licensee's vice president and her husband own the building in which both licensees did business, with Licensee's "six pack shop" on the ground floor and Super Supreme Corp., which did business as "Upper Deck Night Club," on the second floor. They purchased the real estate subject to the upstairs tenant's lease, and had many problems with them as a tenant, forcing them to take action to evict them, without help from the city, the police, or the Board. After the tenant was gone, Licensee had no problems of the sort described in the CLA, and so ceased observing its terms, as business was down and Licensee could not afford the expense (N.T. 16-19).

7. Licensee's counsel has written to the Bureau of Licensing many times to ask them to remove the CLA, without response except to state that the license is in the nuisance bar program, so because of this alleged violation, they will have to go to a non-renewal hearing (N.T. 19-23).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since April 19, 2000, and has had prior violations as follows:

In re Citation No. 03-0564. \$100.00 fine and verification conditions corrected.

1. Not a *bona fide* restaurant (insufficient seating).

In re Citation No. 07-2757C. \$250.00 fine and R.A.M.P. certification mandated.

1. Sales to a minor.

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 \$1,000.00 to \$5,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 5708 K & T, Inc., License No. R-SS-1492, shall pay a fine of fifty dollars (\$50.00) 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.

Dated this 29TH day of MAY, 2015.



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

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