

Mailing Date: JAN 28 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 14-1898
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No.: W04-482143
	:	
v.	:	
	:	
TONYS BAR OF CARNEGIE, INC.	:	PLCB LID No.: 57256
307 W. MAIN ST.	:	
CARNEGIE, PA 15106-2623	:	PLCB License No.: R-SS-6214
	:	
ALLEGHENY COUNTY	:	
	:	
	:	
	:	

**BEFORE:** JUDGE RICHARD O'NEILL EARLEY  
**BLCE COUNSEL:** EMILY GUSTAVE, ESQUIRE  
**LICENSEE:** THOMAS W. BROWN, ESQUIRE

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on September 19, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Tonys Bar of Carnegie, Inc., License Number R-SS-6214, (hereinafter Licensee).

The citation contains two counts.

Count one of the citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-471(d), alleging that during the period July 1 through August 6, 2014, Licensee, by its servants, agents or employees, failed to comply with the order of the Administrative Law Judge at Citation No. 13-2534C, mandating responsible alcohol management training (colloquially known as RAMP).

Count two of the citation charges Licensee with violation of the Liquor Code at 47 P.S. §§4-493(12) and 4-471.1(f), alleging that Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding August 6, 2014.

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Licensee has executed a Statement of Admission, Waiver and Authorization in which Licensee: admits to the violation(s) charged in the citation, agrees that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior citation history, and waives the right to appeal this Adjudication.

The parties submitted letter-briefs regarding count two. Based upon the summary of facts provided in the Bureau's pre-hearing memorandum, the admission(s) of Licensee, and the parties' letter-briefs, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. In an adjudication mailed April 1, 2014, at Citation No. 13-2534C, this court found Licensee in violation of 47 P.S. §493(1), and imposed a \$1,400.00 fine and mandated that Licensee obtain RAMP certification within 90 days of the mailing date of the order, by June 30, 2014.
2. On July 30, 2014, a Liquor Enforcement Officer visited Licensee's premises and spoke with the Board-approved manager. The manager said that Licensee had completed the training during the last month, but did not receive anything that stated the training was completed. I take administrative notice of the Board's RAMP records, which reveal that on that date, two of Licensee's staff had passed server/seller or owner/manager training.
3. The Officer determined that Licensee had not submitted the affidavit request for RAMP certification, a staff roster, or a new employee orientation form to the Board. The Officer told Licensee's manager about these requirements to obtain certification.
4. On August 6, 2014, another Enforcement Officer visited the licensed premises and spoke with the Board-approved manager. The manager could not produce a RAMP certification certificate, a staff roster, or a new employee orientation form.
5. Licensee obtained RAMP certification on August 11, 2014.

CONCLUSION OF LAW:

Count one: Sustained as charged.  
Count two: Dismissed.

DISCUSSION:

Although Licensee submitted a Waiver, effectively stipulating to the facts presented in the Bureau's pre-hearing memorandum, Pennsylvania does not permit a stipulation to deprive a court of its normal judicial prerogatives. Foley Brothers, Inc. v. Commonwealth, Dept. of

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Highways, 163 A.2d 80 (Pa. 1976), Commonwealth, DOT v. Brown, 576 A.2d 75 (Pa.Cmwlth.Ct. 1990). In this case, the judicial prerogative at stake is determining whether the stipulated facts, above, are capable of establishing a violation of §§493(12) and 471.1(f) as alleged in count two.

The issue presented in this case is whether Licensee may be held to violate the requirements of RAMP-related record maintenance once Licensee begins the RAMP certification process, but before Licensee becomes RAMP certified. The “missing” records at issue are the RAMP certification certificate, a staff roster, and new employee orientation forms. (Bureau’s pre-hearing memorandum, II(A)(2), p. 2) The last two are not employment records as that term is generally understood, but specific RAMP forms<sup>1</sup>, thus non-RAMP certified licensees are not obligated to keep these records under §493(12).

However, the Bureau takes the position that the statutory obligation to maintain RAMP records can be triggered before RAMP certification. The Bureau contends the obligations attaching under §471.1(f) arise: (1) upon expiration of the deadline ordered by the ALJ to be RAMP certified, or (2) once a licensee completes owner/manager RAMP training.

The Board addressed similar circumstances in BLCE v. Dipal Corporation t/a Gabby’s, 12-0613 (PLCB 7/24/13). There, an ALJ ordered Dipal to become RAMP certified by December 25, 2011, which Dipal failed to do. An Enforcement Officer inspected the premises months after the ALJ’s deadline, on February 23, 2012, when Dipal was still not RAMP certified. Dipal did not complete new orientation for two new hires (which strongly suggests the likelihood that Dipal did not have PLCB-2228 records, see supra footnote 1) and lacked RAMP signage. (Dipal, N.T. pp. 12-13) During the Officer’s inspection Dipal was unable to provide any documentation that it was RAMP certified.

Later, the Bureau cited Dipal for failure to comply with the ALJ’s order to become RAMP certified, and failure to maintain records pursuant to §§493(12) and 471.1(f) in the period of December 26, 2011, to February 23, 2012.<sup>2</sup> After an ex parte hearing, the ALJ found Dipal in violation on all counts.

On appeal, Dipal argued that there was insufficient evidence in the record to support the ALJ’s conclusion at count three that Dipal violated §§493(12) and 471.1(f). The Board agreed. In fact, the Board found the basis of the Bureau’s charge was “not real clear.” Dipal, p. 5. As a result, the Board was required to study the record to determine whether there was any basis to find Dipal in violation of §§493(12) and 471.1(f). The Board carefully reviewed the transcript and specifically noted that Dipal’s owner completed owner/manager RAMP training on February 18, 2012,<sup>3</sup> (Dipal, p. 6.). Despite its thorough review, the Board concluded the only possible

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<sup>1</sup> The staff roster is PLCB-2325, RAMP Alcohol Service Staff Roster. The new employee orientation form is PLCB-2228, New Employee Licensee Orientation. Among other acknowledgements required from employees on PLCB-2228, at five places employees are required to acknowledge that “house policies have been discussed” regarding handling of specific situations.

<sup>2</sup> Dipal was also charged with violating 47 P.S. §1-102, which was sustained.

<sup>3</sup> Board RAMP records indicate the owner, Parvin Patel, completed training on January 19, 2012. Under either date, the training was completed in the period charged by the Bureau.

basis for count three was Dipal's failure "to produce RAMP certification" on February 23, 2012. Id. The Board rejected this possibility, though, holding "the records were not incomplete because they did not contain certification for something—RAMP certification—that had not yet been attained. Therefore the record does not contain substantial evidence to support Count 3." Id.

The obvious significance of Dipal is that it precludes the Bureau from relying on a licensee's failure to produce a RAMP certificate to establish a violation of §471.1(f). However, Dipal has further implications.

It is noteworthy that the Board did not consider the ALJ's certification deadline to trigger §471.1(f) obligations. If the Board had done this, Dipal's failure to possess the RAMP certificate, new employee orientation forms and signage would have constituted substantial evidence to support a violation. Instead, the Board concluded the triggering event that imposed enforceable obligations under the Liquor Code was the Board's issuing of RAMP certification.

As a result, the Bureau's argument in this case that Licensee's obligations under §471.1(f) arose on the "91<sup>st</sup> day" is not supported by Dipal. For similar reasons I cannot find support for the Bureau's argument that §471.1(f) obligations are triggered by completion of owner/manager training. Dipal's owner had completed training, too, but the Board did not find that a trigger for Dipal's obligation to possess RAMP records before receiving RAMP certification.

However, the Bureau also makes the nuanced argument that §471.1(f) requires, at a minimum, Licensee to maintain records "denoting the completion of the owner/manager RAMP program" regardless of RAMP certification status. I must disagree. If absence of test records is evidence of a violation, then the Dipal Board would have said so: there was no evidence of test records there, either. Yet, the Board did not consider that the basis for a violation of §471.1(f) before RAMP certification was awarded.<sup>4</sup>

Thus, although there was evidence that Dipal was beyond the ALJ's deadline for RAMP certification, and that Dipal's staff had completed owner/manager training, these facts did not trigger Dipal's obligation to possess RAMP records, including signage, proof of RAMP certification, or new employee orientation records. The reason these facts did not constitute substantial evidence of a violation in Dipal is because there exists no enforceable obligation to keep RAMP records before one is RAMP certified. Because the same facts exist in this case, I can find no basis to diverge from the Board's analysis in Dipal.

Finally, the advantage of the Board's approach in Dipal is that it does not saddle licensees with the obligations associated with RAMP before licensees acquire the benefits afforded by RAMP certification. Under the Bureau's interpretation, non-RAMP certified licensees would be

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<sup>4</sup> Of course, test records are automatically maintained by the Board and it would be surprising to punish licensees for failing to keep records the Board is already aware of, unlike, say, when staff are hired or complete orientation. I also note that Licensee did not stipulate that it failed to produce records of completed RAMP training. The Bureau's pre-hearing memorandum, which forms the basis of Licensee's stipulation, is silent on this point. Therefore, without a hearing I cannot find that Licensee failed to produce records of RAMP training.

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exposed to violating RAMP records requirements: for example, a licensee that hires staff with current RAMP training, or a licensee which begins, then abandons, RAMP certification. Under the Bureau's interpretation these licensees might acquire records obligations under §471.1(f) whether or not they are pursuing RAMP certification. Under Dipal these licensees are not obligated under §471.1(f) unless and until they receive RAMP certification.

Accordingly, count two is dismissed.

PRIOR RECORD:

Licensee has been licensed since October 19, 2006, and has had four prior violations:

IN RE:

Citation No. 09-2255. Fine \$1,200.00.

1. Sales after your license expired and had not been renewed and/or validated.  
September 1, 2009.

Citation No. 10-1720. Fine \$2,500.00 and 1 day suspension.

1. Sales after the license expired and had not been renewed and/or validated.  
October 15, 17, 26 and 29, 2009.
2. Possessed or operated gambling devices or permitted gambling on the licensed premises (machines).  
October 29, 2009.

Citation No. 12-0893. Fine \$250.00.

1. Operated the licensed establishment without a valid health permit or license.  
April 1 through May 8, 2012.

Citation No. 13-2534C. Fine \$1,400.00 and RAMP certification mandated.

1. Sales to a minor.  
November 7, 2013.

PENALTY:

For violations of the type found in this case, the Liquor Code permits any of the following penalties: (1) a license revocation, (2) a fine in the range of \$50.00 to \$1,000.00 for each count, (3) a license suspension, or (4) any combination of a fine and suspension. (47 P.S. §4-471) In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violations as charged in this citation, and has waived the right to a hearing and appeal.

Upon review of the facts in this matter, I impose a penalty of \$550.00 for count one.

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ORDER:

THEREFORE, it is hereby ordered that Tonys Bar of Carnegie, Inc., License Number R-SS-6214, pay a fine of \$550.00 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.

Jurisdiction is retained.

Dated this 26<sup>TH</sup> day of January, 2015.



Richard O'Neill Earley, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

**Detach Here and Return Stub with Payment – Note Citation Number on Check**

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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.** 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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