

Mailing Date: MAR 19 2015

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT (BLCE)	:	In Re Citation No.: 15-0004
	:	
	:	BLCE Incident No.: W03-472665
v.	:	
	:	
OLT, INC. T/A BRASS RAIL DELI 2824 HORSESHOE PIKE PO BOX 42 CAMPBELLTOWN, PA 17010-0042	:	PLCB LID No.: 67026
	:	
LEBANON COUNTY	:	PLCB License No.: R-15976
	:	
	:	

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Francisco J. Cordero, Sole Corporate Officer, Stockholder, and Manager

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on January 15, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against OLT, Inc. (Licensee).

The citation charges Licensee with violations of Section 13.102 of the Liquor Control Board Regulations [40 Pa. Code §13.102]. The charge is that Licensee, by your servants, agents, or employees, sold and/or served alcoholic beverages at a discounted price to patrons who joined your VIP/Mug Club, on January 15, 18, February 1, 28, March 15 and April 10, 2014.

Licensee has executed a Statement of Waiver, Admission and Authorization in which Licensee: admits to the violations charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of law, 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 Adjudication history, and waives the right to appeal this Adjudication.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

On the dates charged, Licensee engaged in a promotion described as a VIP club. A consumer may join the club for a one-time, initial fee of \$35.00. Membership entitles the consumer to a 10% discount on alcoholic beverage purchases.¹

CONCLUSION(S) OF LAW:

Licensee violated Liquor Code Section 493(24) [47 P.S. §4-493(24)] by offering an unlawful inducement to increase alcoholic beverage consumption.

DISCUSSION:

Licensee's submission of a Waiver, Admission and Authorization constitutes an agreement the Bureau complied with the mandates of Due Process/Notice. However, had this matter been litigated, a dismissal would have been in order based upon the analysis in *BLCE v. The Phyrst, Inc.*, In Re Citation No.: 11-0158.

There, the licensee was charged with a discount pricing violation. But for the Bureau's Motion to Withdraw the citation, which I granted, the citation would have been dismissed. Just as here, that licensee's promotion did not rise to a discount pricing illegality but rather, was an unlawful direct inducement in violation of Liquor Code Section 493(24) [47 P.S. §4-493(24)].

¹ There is no unlawful discount as the pricing scheme is Licensee's regular and usual practice. It may be said that any promotion is intended to induce alcoholic beverage purchases. For example, a customer may purchase a pint of beer for \$3.00. Yet, a one quart pitcher of beer may regularly cost the consumer \$5.00, a savings of \$1.00 had the consumer bought two pints separately. Historically and by the clear wording of the discount pricing regulations, such a pricing schedule is not unlawful if it represents a licensee's regular and normal pricing system.

Without reciting verbatim that ruling, the Table below illustrates how a consumer is induced to purchase alcoholic beverages. The Table shows that, as the number of purchases increases, the VIP member cost per unit approaches \$9.00 as a limit.

Table

Alcoholic Beverage Price Per Unit Cost Assuming \$10.00 Per Unit Non-Member Price and \$9.00 Per Unit VIP Member Price Plus \$35.00 Initial Fee²

<u>Number of Units</u>	<u>Non-Member</u>	<u>Cost (\$)</u>	<u>VIP Member</u>
1	10		9+35=44
10	100		90+35=125
20	200		180+35=215
30	300		270+35=305
35	350		315+35=350
40	400		360+35=395
50	500		450+35=485
100	1,000		900+35=935

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since August 30, 2012, and has the following Adjudication history:

² The Table's values underscore the economic benefit to Licensee and the rather poor consumer investment. Licensee acquires a customer who is motivated to return to the licensed premises while the consumer's initial investment requires 35 purchases just to break-even. At first glance, these meager returns on investment seem to suggest the inducement to purchase is insignificant. In fact, the small returns actually strengthen the direct inducement to buy more alcoholic beverages.

In Re Citation No.: 14-0049C. Fine \$1,400.00 and RAMP certification mandated.

Sales to a minor on November 15, 2013.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [47 P.S. §4-471] prescribes a penalty of license suspension, or revocation, or a fine of not less than \$50.00, or more than \$1,000.00, or both for the violations found herein.

Discretionary Component(s)

I adopt the Bureau's recommended penalty of a \$250.00 fine.

ORDER:

Imposition of Fine

Licensee must pay a \$250.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 6TH day of March, 2015.



Felix Thau, A.L.J.

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. If you have not already done so, it may be prudent for you to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

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

The fine must be paid by cashier's check, money order, or an attorney's check who is licensed to practice law 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