

Mailing Date: MAY 06 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 15-0153
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-485813
	:	
9241 PW WELSH, LLC	:	
T/A PADDY WHACKS	:	PLCB LID - 58087
9241-43 ROOSEVELT BLVD. REAR	:	
PHILADELPHIA, PA 19114-2205	:	
	:	PLCB License No. R-AP-SS-11481
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 3, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 9241 PW Welsh, LLC, t/a Paddy Whacks, License Number R-AP-SS-11481 (hereinafter "Licensee").

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t/a Paddy Whacks
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An Administrative hearing was held on Tuesday, August 25, 2015, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), in that on January 5 and 6, 2015, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when the Restaurant Liquor License was suspended at Citation No. 13-0493.

The second count charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), in that on January 5 and 6, 2015, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. This investigation resulted from a suspension check in reference to the Adjudication in Citation No. 13-0493. The suspension, ordered by Administrative Law Judge Wright, was to begin at 7:00 a.m. on Monday, January 5, 2015 and end at 7:00 a.m. on Wednesday, January 7, 2015 (Exhibits B-3 and B-4).

2. On Monday, January 5, 2015 at 3:35 p.m., an officer from the Bureau contacted the Office of Administrative Law Judge in Plymouth Meeting, PA. The officer verified that the premises' suspension was still in effect (Exhibit B-4).

3. At 7:20 p.m. on that same day and date, the officer arrived at the licensed premises. The premises appeared to be open and operating. The officer did not observe a notice of suspension placard visibly posted on the premises. The officer entered the premises where one male bartender, Kevin, was rendering service to six patrons, three of whom were in possession of alcoholic beverages. The officer ordered and was served one twelve-ounce bottle of Miller Lite beer for \$3.75 by the bartender. At 7:30 p.m., the officer exited the premises with seven patrons remaining (Exhibit B-4).

4. On Tuesday, January 6, 2015 at 6:30 p.m., the officer arrived at the licensed premises. The premises appeared to be open and operating. He did not observe a notice of suspension placard visibly posted on the exterior of the premises. The officer entered the premises where one female bartender, later identified as Breanna Hiltwin, was rendering service to six patrons, all of whom were in possession of alcoholic beverages. The officer ordered and was served one twelve-ounce bottle of Miller Lite beer for \$3.00 by the bartender (Exhibit B-4).

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5. When the transaction was complete, the officer identified himself and asked to speak with a manager or owner. The female bartender contacted Matthew Jones, brother of the Licensee, by phone. Mr. Jones stated that he thought the premises' suspension started the following week. He further stated that he would cease all alcohol sales for the remainder of the evening. The officer exited the premises at 6:45 p.m. with six patrons remaining (Exhibit B-4).

6. On January 21, 2015, the officer sent, or caused to be sent, a notice of violation letter, under the signature Sergeant Daniel D. Steele, District Office Commander, to the Licensee (Exhibit B-4).

7. Casey Jones is employed at the licensed premises, which is owned by his brother and sister-in-law. He has been employed there for eleven years and has helped out at various other locations. On January 5 and 6, 2015, at the time of the alleged offenses, Casey Jones was not at the licensed premises. He was aware that the premises was supposed to be closed (not selling alcoholic beverages) because of a two-day suspension imposed by the Office of Administrative Law Judge. Mr. Jones indicated that a cleaning crew was set up to do a deep cleaning on the dates of suspension, but that there was some mistake as to the dates of closing and suspension. As such, they were open on the first day of suspension, but after being made aware of the error by the Bureau, the premises was closed (N.T. 9-13).

CONCLUSIONS OF LAW:

Count No. 1 - On January 5 and 6, 2015, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when the Restaurant Liquor License was suspended at Citation No. 13-0493, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16).

Count No. 2 - On January 5 and 6, 2015, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension, in violation of Section 15.62(a) of the Liquor Control Board Regulations, 40 Pa. Code §15.62(a).

PRIOR RECORD:

Licensee has been licensed since October 3, 2008, and has a record of prior violations as follows:

In Re:

Citation No. 09-2967. \$1,250.00 fine.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
November 22, 2009.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
November 22, 2009.

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3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
November 22, 2009.

Citation No. 11-0299C. \$500.00 fine.

1. Sales to a minor.
January 20, 2011.

Citation No. 12-0395. \$300.00 fine.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
December 31, 2011.

Citation No. 12-1634C. One day suspension.

1. Sales to a minor.
October 24, 2012.

Citation No. 13-0493. Two days suspension.

1. Sales to a minor.
January 3, 2013.

Citation No. 14-1729. \$150.00 fine.

1. Failed to comply with the Order of the Administrative Law Judge mandating RAMP certification.
June 4 through July 10, 2014.

DISCUSSION:

After careful review of the facts of this case, a monetary penalty and period of suspension shall be imposed. It is noted that Licensee did serve one day of the previously imposed two day suspension.

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 Count No. 2 of this case.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 1 of this case.

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Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Therefore, penalties shall be assessed as follows:

Count No. 1 - One day suspension.

Count No. 2 - \$250.00 and one day suspension.

Accordingly, we issue the following:

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 9241 PW Welsh, LLC, t/a Paddy Whacks, License Number R-AP-SS-11481, pay a fine of Two Hundred Fifty Dollars (\$250.00) 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 FURTHER ORDERED that the Restaurant Liquor License of 9241 PW Welsh, LLC, License Number R-AP-SS-11481 (including all permits and Licensee Discount Card), be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday August 1, 2016 and **ENDING** at 7:00 a.m. on Wednesday, August 3, 2016.

Licensee is directed on Monday, August 1, 2016, 2016 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if a replacement placard is needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine and Good Spirits stores.

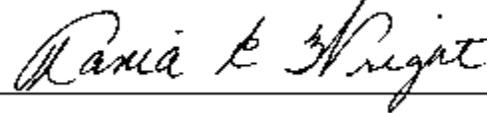
The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Wednesday, August 3, 2016 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

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Jurisdiction of this matter is retained.

Dated this 4TH day of MAY, 2016.



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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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

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