

Mailing Date: APR 01 2016

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

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| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | In Re: Citation No. 15-0208 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | |
| v. | : | BLCE Incident No. W01-489757 |
| | : | |
| LA TAMBORA CAFÉ | : | |
| RESTAURANT, INC. | : | PLCB LID - 61439 |
| 738-740 ADAMS AVE. | : | |
| PHILADELPHIA, PA 19124-2318 | : | |
| | : | PLCB License No. R-AP-SS-EHF-6312 |
| | : | |
| PHILADELPHIA COUNTY | : | |

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

AMENDED ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 17, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against La Tambora Café Restaurant, Inc., License Number R-AP-SS-EHF-6312 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, June 17, 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 Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on January 1, 2015, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, eighteen (18) years of age.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on January 1, 2015, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. On Thursday, January 1, 2015 at 3:00 a.m., an officer from the Bureau was in the vicinity of the licensed premises investigating on New Year's for after hour's service. The officer observed the premises to be open and operating. The uniformed Enforcement officer approached the entrance with another officer, identified himself to the five security guards, and entered the premises. The officer observed approximately 500 patrons inside the premises, the vast majority of whom were still in possession of alcoholic beverages, to include beers and mixed drinks. The officer did not observe any sales of alcoholic beverages (N.T. 6-10).

2. Soon after the officer arrived, the lights were brought up and security began to clear the premises. As the lights came up, the officer observed a very youthful appearing female patron in possession of some type of alcoholic beverage. The officer stopped her and identified himself to the patron, who stated that she was eighteen years of age. She stated that she did present her true identification at the door and was given an armband and told she could not drink. The officer could smell the odor of alcohol on her. She admitted to being in possession of an alcoholic mixed drink. He determined that her name was K.T. and she was born July 4, 1996. She indicated that the drink in her hand belonged to a friend, but that she had one drink on the premises and several before arriving. She was issued a citation for violation of PCC 6308(A), underage drinking, and a patron questionnaire was completed (N.T. 10-13, 24-25 and Exhibit B-3).

3. The officer then spoke with Antonio Dominguez, the corporate president, informing him that a minor had been served alcohol inside the premises. He stated that the security staff was supposed to request identification from every patron upon entry. The officer did not observe a declaration of age card file or electronic identification scanner (N.T. 14-17 and Exhibit B-3).

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4. Mr. Dominguez stated that he had prepared a buffet for approximately 300 people and that it was to be open until 5:00 a.m. The officer observed no food on the premises (N.T. 15, 27).

CONCLUSIONS OF LAW:

Count No. 1 - On January 1, 2015, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, eighteen (18) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

Count No. 2 - On January 1, 2015, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a).

PRIOR RECORD:

Licensee has been licensed since November 18, 2009, and has a record of prior violations as follows:

In Re:

Citation No. 12-0208. \$1,650.00 fine. Licensee's Appeal to Board denied. Licensee's Appeal to Court of Common Pleas pending.

1. Used loudspeakers or devices whereby the sound of music could be heard outside.
November 18, 24, December 18 and 31, 2011.
2. Sales between 2:00 a.m. and 7:00 a.m.
December 31, 2011.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
December 31, 2011.

Citation No. 12-0825. Two days suspension. Licensee's Appeal to Board denied. Licensee's Appeal to Court of Common Pleas pending.

1. Sales between 2:00 a.m. and 7:00 a.m.
March 31, 2012.

Citation No. 13-1165C. Three days suspension and RAMP Certification mandated.

1. Sales to a minor.
May 2, 2013.

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Citation No. 13-1415. \$300.00 fine and two days suspension.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
November 2, 18, 2012, January 26, February 10, 14, March 9 and April 7, 2013.
2. Failed to post signage as required by the Clean Indoor Air Worker Protection Law.
November 2, 18, 2012, January 26, February 10, 14, March 9 and April 7, 2013.
3. Sales between 2:00 a.m. and 7:00 a.m.
January 26, 2013.
4. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
January 26, 2013.
5. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
April 7, 2013.

Citation No. 13-2211. \$100.00 fine and restitution ordered.

1. Obtained liquor from sources other than Pennsylvania State Stores.
February 24 and July 12, 2013.

Citation No. 14-1771. \$500.00 fine.

1. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
August 3, 2014.

DISCUSSION:

Licensee was attempting to make some extra money by having a New Year's Eve Party. However, his extended hours permit only allowed service of food after hours. Although the officer did not witness any sales of alcoholic beverages, there were hundreds of patrons still on the premises after 3:00 a.m. with drinks in their possession. In addition, the officer saw one youthful appearing person with an alcoholic beverage in her possession on the premises. She was found to be eighteen years of age.

In that Licensee had a sales to minors and after hour's sales violation in 2013, a suspension is mandated. In addition it is noted that Licensee has prior offenses for allowing patrons to possess alcoholic beverages after hours.

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.

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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.

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 - Three days suspension.

Count No. 2 - \$750.00.

Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, La Tambora Cafe Restaurant, Inc., License Number R-AP-SS-EHF-6312, pay a fine of Seven Hundred Fifty Dollars (\$750.00) 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 LaTambora Café Restaurant, Inc., License Number R-AP-SS-EHF-6312 (including all permits and Licensee Discount Card), be suspended for a period of three (3) days **BEGINNING** at 7:00 a.m. on Monday, June 13, 2016 and **ENDING** at 7:00 a.m. on Thursday, June 16, 2016.

Licensee is directed on Monday, June 13, 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 Thursday, June 16, 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 30TH day of MARCH, 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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