

Mailing Date: MAR 08 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 15-0339
LIQUOR CONTROL ENFORCEMENT	:	BLCE INCIDENT NO. W03-488641
	:	
v.	:	
	:	
	:	PLCB LID - 62115
T-N-KEIFFER'S BRICKHOUSE, LP	:	
3095 TURKEY VALLEY RD.	:	PLCB LICENSE NO. R-AP-SS-21470
MT. PLEASANT MILLS, PA 17853	:	
	:	
JUNIATA COUNTY	:	

ADJUDICATION

BEFORE: DANIEL T. FLAHERTY, JR., ALJ
BUREAU COUNSEL: JOHN H. PIETRZAK
LICENSEE: NO APPEARANCE

BACKGROUND:

This proceeding arises out of a citation that was issued on March 12, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against T-N-KEIFFER'S BRICKHOUSE, LP, (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations [40 Pa. Code §5.41] in that during the period October 21 through December 5, 2014, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, which expired on October 20, 2014.

The second count charges Licensee with violation of Section 474.1(a) of the Liquor Code [47 P.S. §4-474.1(a)] and Section 7.31(a) of the Liquor Control Board Regulations [40 Pa. Code §7.31(a)] in that Licensee, by its servants, agents or employees, failed to return its restaurant liquor license and wholesale liquor purchase permit cards to the Board after the licensed establishment had not been in operation for a period of fifteen (15) consecutive days between December 21, 2014 and January 15, 2015.

The investigation which gave rise to the citation began on December 5, 2014 and was completed on February 3, 2015; and notice of the violation was sent to Licensee by Certified Mail on February 11, 2015. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 19, 2015 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 3095 Turkey Valley Road, Mt. Pleasant Mills, PA 17853 by certified mail on July 1, 2015. The notice set forth the date and time of the hearing as August 19, 2015 at 1:45 p.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1 AND 2

1. The Retail Food Facility License for the licensed premises (health permit) expired on October 20, 2014 (N.T. Exhibit C-6).
2. On December 5, 2014, two officers of the Bureau arrived at the licensed premises. One of the officers entered the licensed premises where he observed a male bartender rendering service to 10 patrons (N.T. 7-8).
3. The officer approached the bartender and ordered a 12-ounce bottle of Busch beer, paying \$2.25. The beer was served to the officer (N.T. 8).
4. The officer departed the premises and returned with the other officer. Upon reentry, the officers identified themselves to the Board approved manager. One of the officers found the health permit which had expired on October 20, 2014 (N.T. 8-9).
5. One of the officers informed the manager that she would have to shut the premises down and could not serve any alcohol or food until she got a valid health license. The manager informed the officer she would close the premises and would stop serving alcohol until a valid health license had been received (N.T. 9).
6. On December 7, 2014, one of the officers returned to the licensed premises to review sales records and interview the president/owner of Licensee corporation. He also met with the Board approved manager of Licensee corporation. At this meeting, he reviewed records which established that the licensed premises had been open and operating every day since October 20, 2014 until the arrival of the officers on December 5, 2014 (N.T. 9-10).

7. At the meeting on December 7, 2014, the officer informed the president of Licensee corporation that he had 15 days from December 5 to open the licensed premises and, if he didn't reopen the premises within this 15 day period he would have to place his license in safekeeping until he actually reopened the premises (N.T. 10-11).

8. The Pennsylvania Department of Agriculture gave the licensed premises authority to operate as of January 6, 2015 (N.T. 13-14).

9. The licensed premises reopened on January 16, 2015. At no point was the liquor license for the licensed premises placed in safekeeping during the period from December 5, 2014 through January 15, 2015 (N.T. Exhibit C-7 and C-8).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since September 15, 2009, and has had five (5) prior violations:

IN RE:

Citation No. 11-1679. Fine \$2,000.00.

1. Gambling (NASCAR pools). June 27 and 28, 2011.
2. Smoked and/or permitted smoking in a public place where smoking was prohibited. June 27 and 28, 2011.

Citation No. 14-1057. Fine \$850.00.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited. April 8, 2014.
2. Failed to notify the Board within 15 days of a change of manager. August 17, 2013 through April 8, 2014.

Citation No. 14-1543X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 21 and 28, 2014.

Citation No. 14-1760. Fine \$500.00 and 1 day suspension and thereafter until conditions corrected.

1. Failed to notify the Board within 15 days of a change of manager. April 24 through July 16, 2014.

Citation No. 14-1796X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. June 23, 2014.

PENALTY:

Section 471 of the Liquor Code [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 violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$450.00 fine

Count 2 - \$450.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee T-N-KEIFFER'S BRICKHOUSE, LP, pay a fine of \$900.00 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 4TH day of March, 2016.



Daniel T. Flaherty, Jr., J.

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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.

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 CHIEF COUNSEL'S OFFICE AT 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.** 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

IN RE: CITATION NO. 15-0339
T-N-KEIFFER'S BRICKHOUSE, LP