

Mailing Date: APR 25 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 15-0432
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-490957
	:	
4100 N. 5 <sup>TH</sup> ST., INC.	:	
4100 N. 5 <sup>TH</sup> ST.	:	PLCB LID - 67921
PHILADELPHIA, PA 19140-2614	:	
	:	
	:	PLCB License No. R-AP-SS-1079
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 17, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 4100 N. 5<sup>th</sup> St., Inc., License Number R-AP-SS-1079 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, March 22, 2016, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation 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 May 1, 2014 through February 19, 2015, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2014.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on January 29, 2015 and ended on February 23, 2015. A notice of violation letter dated February 26, 2015 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on February 28, 2015. A citation dated March 17, 2015 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on March 19, 2015. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on February 2, 2016 by certified mail, return receipt requested, and by first class mail. That mailing was signed as received on February 4, 2016 (N.T. 11-12 and Exhibits B-1 and B-2).

2. On Thursday, January 29, 2015 at 12:05 p.m., an officer from the Bureau entered the licensed premises which was open and operating. He identified himself to Laura Montalvo, employee-in-charge, and informed her that a routine inspection would be conducted. During the course of the inspection, the officer observed that the posted health permit had expired on April 30, 2014. Ms. Montalvo stated that she needed to speak with the owner and president, Yaritza Fernandez. The Officer exited the premises at 12:40 p.m. (N.T. 6-8).

3. On Thursday, February 19, 2015 at 2:05 p.m., the officer entered the licensed premises which was open and operating. He identified himself to Yaritza Fernandez, president/manager, and asked her if the premises had a current health permit. Ms. Fernandez stated that the Philadelphia Department of Licenses and Inspections had requested that they make some changes and that they had not yet received their new health permit. She agreed to give a written statement acknowledging that the licensed premises was open and selling alcohol every day since May 1, 2014. The officer exited the premises at 2:45 p.m. (N.T. 8-9).

4. A Certification/Attestation from Licenses and Inspections dated August 17, 2015 stated that the licensed premises did not possess a valid health permit between May 1, 2014 and February 19, 2015 (N.T. 9-10 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

During the period May 1, 2014 through February 19, 2015, Licensee, by its servants, agents or employees, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2014, in 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.

PRIOR RECORD:

Licensee has been licensed since June 7, 2013, and has a record of prior violations as follows:

In Re:

Citation No. 14-0536. \$300.00 fine and potential suspension held in abeyance pending compliance. Fine not paid, RAMP training not completed, and license suspended one day and thereafter until Licensee in compliance.

1. Board-approved manager failed to complete RAMP training within 180 days.  
January 6 through February 13, 2014.

DISCUSSION:

The Liquor Code and its Regulations mandate that alcoholic beverages cannot be dispensed in licensed premises without a current and valid health permit. Further, the health permit must be properly posted on the premises. Under the circumstances, a moderate monetary penalty shall be imposed. Licensee will also be required to submit a copy of a current and valid health permit.

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 this case.

Accordingly, we issue the following:

ORDER

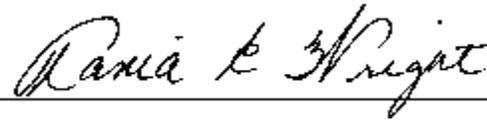
THEREFORE, it is hereby Ordered that Licensee, 4100 N. 5<sup>th</sup> St., Inc., License Number R-AP-SS-1079, pay a fine of Four Hundred Dollars (\$400.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

4100 N. 5<sup>th</sup> St., Inc.  
In Re: Citation No. 15-0432

IT IS FURTHER ORDERED that Licensee, 4100 N. 5<sup>th</sup> St., Inc., License Number R-AP-SS-1079, submit a copy of a current and valid health permit within twenty (20) days from the mailing date of this Adjudication. If said documentation is not submitted within twenty (20) days from the mailing date of this Adjudication, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

**Jurisdiction of this matter is retained.**

Dated this 20<sup>TH</sup> day of APRIL, 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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4100 N. 5<sup>th</sup> St., Inc.  
In Re: Citation No. 15-0432

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

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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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