

Mailing Date: DEC 23 2015

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 15-0454
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W05-489270
v.	:	
	:	
SEKERAKS LOUNGE, LLC	:	PLCB LID No.: 67550
2690 WILLIAM PENN AVE. STE. 4	:	
JOHNSTOWN, PA 15909-1029	:	
	:	PLCB License No.: R-AP-SS-7081
CAMBRIA COUNTY	:	

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Emily L. Gustave, Esquire

LICENSEE: Kevin A. Sekerak, Member and Manager

**BACKGROUND:**

This proceeding arises out of a citation, containing three counts that was issued on March 20, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Sekeraks Lounge, LLC (Licensee).

The first count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that Licensee, by your servants, agents, or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, on December 20, 2014.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by your servants, agents, or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding January 27, 2015.

The third count charges Licensee with a 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]. The charge is that Licensee, by your servants, agents, or employees, operated your licensed establishment without a valid health permit or license, which expired on January 15, 2015, on January 23, 24 and 27, 2015.

I presided at an evidentiary hearing on October 29, 2015 at 180 Charlotte Drive, Altoona, Pennsylvania.

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

**FINDINGS OF FACT:**

1. The Bureau began its investigation on December 22, 2014 and completed it on February 11, 2015. (N.T. 6)
2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on February 26, 2015. The notice alleged the violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count No. 1

3. A local police officer, while in uniform and in a marked patrol car, drove by the premises at 5:00 a.m., December 20, 2014. The police officer noticed people inside the licensed premises. He entered. There were three people inside, one being 19 years old. (N.T. 26-37)

Count No. 2

4. On January 27, 2015, a uniformed Bureau Enforcement Officer entered the premises at 1:20 p.m., when it was open for business, to conduct an administrative inspection. Licensee's sole corporate member was present. Licensee maintained no payroll records, although he did have three staff members. (N.T. 11-19)

Count No. 3

5. During the administrative inspection of January 27, 2015, the Officer learned that Licensee's health license, issued by the Pennsylvania Department of Agriculture, expired on January 15, 2015 and had yet to be renewed. Licensee was open and in operation on January 23 and 24, 2015 as well as January 27, 2015. (Commonwealth Exhibit No. C-3, N.T. 19-25)

**CONCLUSION(S) OF LAW:**

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. I sustain the violations as charged.

**PRIOR ADJUDICATION HISTORY:**

Licensee has been licensed since March 13, 2013, and has the following Adjudication history:

In Re Citation No.: 13-1913. Fine \$2,500.00 and eight days suspension with thereafter conditions. Fine not paid and license suspended one additional day and thereafter until fine paid.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding June 11, 2013.
2. Manager was employed by another business without Board approval during the period May 12 through 26, 2013.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time on June 3, 2013.

In Re Citation No.: 15-0247. Fine \$1,400.00 and one day suspension. Sales during a time when the license was suspended on January 9, 2015.

**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)***

As to the question of employee records, Mr. Sekerak claims his friends helped out in the business; they were not employees. Mr. Sekerak further advised that he was present at a hearing held by the Department of Labor and Industry, Bureau of Labor Law. Mr. Sekerak thought the results of that hearing were favorable to him.

I have received a certified copy of that hearing's results. Actually, his business was found to be in violation of the Minimum Wage Law of 1968. Mr. Sekerak was directed to take immediate corrective measures. As the Department of Labor and Industry is primarily responsible for monitoring our wage, hours, and employment tax laws, I defer to the conclusions drawn.

Mr. Sekerak also explains that those present on the early morning hours of December 20, 2014 were his woman friend, her son, and a woman friend of hers. Mr. Sekerak gave his friend a key as she assisted in operating the business. He had no idea his friend took it upon herself to have what appears to be a small party. When Mr. Sekerak found out about his friend's act, he "reamed her out."

I do not find Mr. Sekerak to be one who deliberately violates law. As I told him during the hearing, he treats the business entirely too casually. I am certain Mr. Sekerak has learned a great deal.

I impose:

Count No. 1 - \$250.00 fine.

Count No. 2 - \$200.00 fine.

Count No. 3 - \$100.00 fine.

**ORDER:**

***Imposition of Fine***

Licensee must pay a \$550.00 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 10<sup>TH</sup> day of December, 2015.



Felix Thau, A.L.J.

bc

**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.

### Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us). The full requirements for an appeal can be found in 47 P.S. §4-471.

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

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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