

Mailing Date: FEB 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.: 15-0878
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: W04-474965
v.	:	
	:	
TEMMA, LLC	:	PLCB LID No.: 65964
110 SMITHFIELD ST.	:	
PITTSBURGH, PA 15222-2204	:	PLCB License No.: R-AP-SS-5906
	:	
ALLEGHENY COUNTY	:	
	:	
	:	
	:	

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BLCE COUNSEL: EMILY GUSTAVE, ESQUIRE
LICENSEE COUNSEL: HOLLY L. GUNA, ESQUIRE, COUNSEL FOR ESTATE OF
EMMA MASON, SOLE OWNER AND OFFICER OF TEMMA, LLC

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 22, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Temma, LLC, License Number R-AP-SS-5906, (hereinafter Licensee).

The citation contains five counts.

Count one of the citation charges Licensee with violation of the Liquor Control Board Regulations at 40 Pa. Code §5.23(c), alleging that during the period April 16 through June 19, 2014, Licensee, by its servants, agents or employees, failed to notify the Board within fifteen days of a change of manager.

Count two of the citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-493(12), alleging that Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding June 18, 2014.

Count three of the citation charges Licensee with violation of the Liquor Code at 47 P.S. §1-102, alleging that on May 24, 2014, Licensee's licensed business was not a bona fide restaurant in that Licensee, by its servants, agents or employees, maintained insufficient food items and eating utensils.

Count four¹ of the citation charges Licensee with violation of the Liquor Code at §4-471 and the Tax Reform Code of 1971 at 72 P.S. §7202, alleging that during the period April 1, 2012 through April 8, 2015, Licensee, Temma, LLC, failed and/or refused to remit, in a timely manner, to the Commonwealth of Pennsylvania, Department of Revenue, sales tax due and owing for the period of April 1, 2012 through March 31, 2013, in the amount of \$4,570.01, and for the period of July 1, 2013 through December 31, 2013, in the amount of \$1,542.33.

Count five of the citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-471 and the Allegheny County Alcoholic Beverage Tax Regulations at §301(c), as codified at the Allegheny County Ordinances 808.A, No. 54-07-OR/3548-07, alleging that Licensee, Temma, LLC, violated the Allegheny County Alcoholic Beverage Tax Law in that Licensee failed and/or refused to file, in a timely manner, the monthly alcoholic beverage tax return form with the County Treasurer's Office for the period of December 1, 2013 through August 31, 2014.

Licensee² has executed a Statement of Admission, Waiver and Authorization in which Licensee: admits to the violation(s) charged in the citation, agrees that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior citation history, and waives the right to appeal this Adjudication.

Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Background

1. Licensee is a Limited Liability Company wholly owned by Emma Mason. Board records reveal that Ms. Mason is Licensee's sole officer.
2. Ms. Mason died December 12, 2014, and the Allegheny County Register of Wills granted Letters of Administration to her spouse, Richard Mason, on March 23, 2015.
3. The record does not indicate whether the limited liability company has issued a certificate of dissolution pursuant to 15 Pa. C.S.A. §8975, or whether it was organized to have perpetual existence as provided under 15 Pa. C.S.A. §8971(b).

¹ A Motion to Amend Citation was issued on July 15, 2015, correcting the amounts of tax due.

² Actually, the Estate of Emma Mason. See Findings of Fact Nos. 1-4.

4. The record is unclear whether the Estate of Emma Mason has an unimpeded interest in the assets of the limited liability company, which includes the liquor license, but if not, there is no evidence that any potential party/intervenor has an interest in revoking the liquor license.

Counts one and two:

5. On April 21, 2014, a Liquor Enforcement Officer spoke with Justin Ferrari-Wilhelm, who identified himself as Licensee's manager. However, Emma Mason was listed as Licensee's Board-approved manager in Board records. Mr. Wilhelm said he did not know Emma Mason. Mr. Wilhelm informed the Officer that he became Licensee's manager on April 1, 2014. He provided the Officer with a written statement indicating this.
6. On June 18, 2014, the Officer spoke with Terence Starr, Emma Mason's son, and formerly an LLC Member of Licensee. Mr. Starr confirmed that Mr. Wilhelm became the manager on April 1, 2014. He said that Emma Mason has not been Licensee's manager for a year-and-a-half. Mr. Starr stated that between the time Ms. Mason left and April 1, 2014, he managed the premises. The Officer asked Mr. Starr if his employee records would correspond with those dates. Mr. Starr said that he did not have any employee records.

Counts two and three:

7. On May 24, 2014, the Officer conducted a routine inspection in the presence of Mr. Wilhelm and a bartender, who was serving five patrons. The Officer examined the kitchen and the only food found was eight 16-oz. cans of soup, two-serving size. Mr. Wilhelm said that they have food "sometimes when the owner cooks for people." He was unable to produce any food sales receipts or invoices for food purchases.

Count four:

8. The Pennsylvania Department of Revenue notified the Bureau that Licensee did not pay its sales tax. On March 19, 2014, a Liquor Enforcement Officer spoke with Agent Albright of the Department of Revenue. Mr. Albright stated that Licensee owes sales tax from the third quarter of 2012 to the present.
9. On April 21, 2014, Mr. Wilhelm told the Officer that he sent "a bunch of stuff" to the Department of Revenue that day.
10. On June 18, 2014, the Officer spoke with Mr. Starr, who stated that the taxes would be paid "tomorrow or the next day."
11. On April 8, 2015, the Officer spoke with Colin O'Malley of the Pennsylvania Department of Revenue. Mr. O'Malley gave the Officer a breakdown of the sales taxes that Licensee owes. As of that date, Licensee owed \$4,570.01 for the period

April 1, 2012 through March 31, 2013, and \$1,542.33 for the period July 1, 2013 through December 31, 2013, for a total of \$6,112.34.

Count Five:

12. The Bureau received a Certified Notice of Unpaid Alcohol Taxes dated January 7, 2015, certifying that Licensee did not file its monthly alcoholic beverage tax return forms with the Allegheny County Treasurer's Office for the period December 1, 2013 through August 31, 2014.

13. To date, there is no record that Licensee has filed the tax forms for the period charged.

CONCLUSION OF LAW:

Counts one through five: Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since March 2, 2012, and has had four prior violations:

IN RE:

Citation No. 13-0134. Fine \$250.00.

1. Violated the Allegheny County Alcoholic Beverage Tax Law. July 1, 2012 through October 31, 2012.

Citation No. 13-1010. Fine \$350.00.

1. Engaged in unlawful discrimination in that female patrons were admitted free of charge while an admission fee was charged to male patrons. March 9, 2013.

Citation No. 13-1159. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid. Fine still not paid and license revoked. Upon payment of fine, revocation order was vacated and license suspended 4 days.

1. Operated the licensed establishment without a valid health permit or license. February 1 through March 14, 2013.

Citation No. 14-2341. Fine \$1,400.00.

1. Sales after the license expired and had not been renewed and/or validated. June 2 through August 11, 2014, excluding Sundays.

PENALTY:

For violations of the type found in this case, the Liquor Code permits any of the following penalties: (1) a license revocation, (2) a fine in the range of \$50.00 to \$1,000.00, (3) a

license suspension, or (4) any combination of a fine and suspension. (47 P.S. §4-471) In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violation(s) as charged in this citation, and has waived the right to a hearing and appeal.

Counsel for the Bureau and counsel for Licensee originally asked that I consider a fine in the amount of \$1,300.00 in this case. I notified the parties that I would reject the recommendation if Licensee could not satisfy the Bureau that it had filed the tax returns due under count six. The Bureau and Licensee now ask that I consider a penalty of \$1,600.00. I am rejecting the recommendation largely due to the aggravating circumstances related to Licensee's delays. Specifically, Licensee delayed this proceeding by failing or refusing to file tax returns due under count six. To date, I have received no explanation for this except that it is not done.

Furthermore, Licensee caused additional delay in this proceeding by failing to notify immediately the Bureau or this court that Emma Mason died on December 12, 2014. This is not a matter of courtesy, but one essential to ensuring the proper parties appear on behalf of the Licensee. In this case, Licensee did not notify the court of Ms. Mason's death until November 19, 2015, 181 days after it was cited and more than two months after it first attempted to submit its waiver. Because there was nothing in the record to indicate counsel had authority from the Estate or the Limited Liability Company to submit the then-pending waiver, I had to reject the waiver, causing additional delay.

Thus, as a result of Licensee's unexplained intransigence and lack of candor, it shall pay a fine in the amount of \$2,150.00. Accordingly, I impose a penalty of \$250.00 for count one, \$500.00 for count two, \$100.00 for count three, \$300.00 for count four, and \$1,000.00 for count five.

ORDER:

THEREFORE, it is hereby ordered that Temma, LLC, License Number R-AP-SS-5906, pay a fine of \$2,150.00 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 29TH day of January, 2016.



Richard O'Neill Earley, J.

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TEMMA, LLC
IN RE CITATION NO. 15-0878

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.

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. 15-0878
Temma, LLC