

Mailing Date: JAN 15 2016

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : IN RE Citation No.: 15-0947
LIQUOR CONTROL ENFORCEMENT :
 : BLCE Incident No.: W04-492859
v. :
 :
 :
HEIDELWAY, INC. :
1622 WASHINGTON ST. : PLCB LID No.: 18134
CARNEGIE, PA 15106-4039 : PLCB License No.: R-AP-SS-EHF-16678
 :
ALLEGHENY COUNTY :
 :
 :

BEFORE: JUDGE RICHARD O'NEILL EARLEY

APPEARANCES:

BLCE COUNSEL: EMILY GUSTAVE, ESQUIRE
LICENSEE: EX PARTE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 5, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Heidelway, Inc., License Number R-AP-SS-EHF-16678, (hereinafter Licensee).

The citation contains two counts.

Count one 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 Allegheny County Ordinances 808.A, No. 54-07-OR/3548-07, alleging that Licensee, Heidelway, Inc., violated the Allegheny County Alcoholic Beverage Tax Law, in that Licensee sold in Allegheny County and failed to remit to the Allegheny County Treasurer's Office, the beverage tax due and owing for the period of January 1, 2014 through January 31, 2015, in the amount of \$13,354.88.

Count two of the citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-471.1(a) and the Liquor Control Board Regulations at 40 Pa. Code §7.31(a), alleging 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 its licensed establishment had not been in operation for a period of fifteen consecutive days between March 6 and April 6, 2015.

An administrative hearing was conducted on Tuesday, December 8, 2015, at 11:30 a.m., at Two Parkway Center, Suite G-8, in Pittsburgh, Pennsylvania. The Bureau was represented by Emily L. Gustave, Esquire. Licensee was not represented.

Based on Licensee's stipulations and evidence from the hearing, I make the following Findings of Fact and reach the following Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on March 9, 2015 and completed its investigation on April 27, 2015. (Exs. C-1, C-2, N.T. p. 6)
2. The Citation was mailed to Licensee on June 5, 2015. (Exs. C-4 and C-5)
3. The Notice of Violation letter was mailed to Licensee on May 7, 2015. An Amended Notice of Violation letter was mailed to Licensee on May 20, 2015. (Exs. C-1, C-2 and C-3, N.T. pp. 6-7)
4. On March 2, 2015, the Bureau received a Certified Notice of Unpaid Alcohol Taxes confirming that Licensee did not file Allegheny County Alcoholic Beverage Tax forms for the period January 1, 2014 through January 31, 2015. The Allegheny County Treasurer's Office received a judgment in which the court ordered Licensee's premises padlocked on March 6, 2015. (N.T. pp. 8-9, 14-16)
5. On March 24, 2015, a Liquor Enforcement Officer spoke with Licensee's manager, Michael Kucsma, who stated that he was trying to obtain money to pay the back taxes. The Officer advised Mr. Kucsma to place the license into safekeeping. Mr. Kucsma said he cannot get the license because the premises is padlocked. (N.T. pp. 8-9, 14-16)
6. On April 6, 2015, the Officer received a Certified Notice of Unpaid Alcohol Taxes, confirming that Licensee's premises was padlocked by the Sheriff on March 6, 2015, per judgment of \$13,354.88. (N.T. pp. 8-9, 12-16)
7. On April 21, 2015, the Board sent the Bureau an attestation certifying that Licensee's liquor license was not placed into safekeeping after the premises was padlocked during the period March 6, 2015 through April 6, 2015. (Ex. C-6, N.T. pp. 14-15)
8. By order of the Office of Administrative Law Judge at Citation No. 13-2631, this license was revoked on May 22, 2015, for failure to pay fines. (N.T. p. 19)

CONCLUSIONS OF LAW:

1. Notice provisions of the Liquor Code at 47 P.S. §4-471 have been satisfied.
2. Count one: Licensee violated the Liquor Code at 47 P.S. §4-471 and the Allegheny County Alcoholic Beverage Tax Regulations at §301(c), as codified at Allegheny County Ordinances 808.A, No. 54-07-OR/3548-07, alleging that Licensee, Heidelway, Inc., sold alcohol in Allegheny County and failed to remit to the Allegheny County Treasurer's Office, the beverage tax due and owing for the period of January 1, 2014 through January 31, 2015, in the amount of \$13,354.88.
3. Count two: Licensee violated the Liquor Code at 47 P.S. §4-471.1(a) and the Liquor Control Board Regulations at 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 its licensed establishment had not been in operation for a period of fifteen consecutive days between March 6 and April 6, 2015.

PRIOR RECORD:

Licensee has been licensed since October 12, 1983, and has had 13 prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

IN RE:

Citation No. 91-2874. Fine \$1,150.00.

1. Sales to a minor.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.

Citation No. 93-2650. Fine \$1,200.00.

1. Sales to a minor.
2. Minors frequenting.

Citation No. 99-2046. Fine \$150.00.

1. Fortified, adulterated and/or contaminated liquor.

Citation No. 01-0701. Fine \$1,000.00.

1. Sales to a minor.

Citation No. 03-1383. Fine \$1,100.00.

1. Sold alcoholic beverages after your restaurant liquor license expired and had not been renewed and/or validated.

Citation No. 03-1849. Fine \$1,000.00 and 1 day suspension.

1. Sales after your restaurant liquor license expired and had not been renewed and/or validated.

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Citation No. 07-1344. Fine \$1,200.00, 1 day suspension and R.A.M.P. training mandated.

1. Sales to a minor.
May 3, 2007.

Citation No. 08-0766. Fine \$250.00.

1. Failed to comply with the order of the administrative law judge mandating R.A.M.P. training.
January 1 through February 22, 2008.

Citation No. 11-0773C. Fine \$1,250.00 and R.A.M.P. training mandated.

1. Sales to a minor.
March 30, 2011.

Citation No. 11-1125. Fine \$700.00.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (machines).
May 11, 2011.

Citation No. 12-1262. Fine \$2,000.00 and 1 day suspension.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
June 23, 2012.
2. Sales between 2:00 a.m. and 7:00 a.m.
June 23, 2012.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
June 23, 2012.
4. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
June 23, 2012.

Citation No. 12-1723. Fine \$2,050.00 and 1 day suspension.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
July 19, 28, August 3 and 11, 2012.
2. Sales between 2:00 a.m. and 7:00 a.m.
August 3, 2012.
3. Operated the licensed establishment without a valid health permit or license.
July 19, 28, August 3 and 11, 2012.
4. Sold alcoholic beverages on credit in contravention of the Liquor Code and Title 40 of the Pennsylvania Code.
On 10 dates from July 9 through October 8, 2012.

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Citation No. 13-2631. Fine \$2,400.00 and 1 day suspension. Fine not paid and license revoked.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 25, 2013.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
May 25, 2013.
3. Sales after the license expired and had not been renewed and/or validated.
June 1 through July 31, 2013.
4. Used loudspeakers or devices whereby the sound of music could be heard beyond the Licensee's property line.
August 15, 2013.

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 for each count, (3) a license suspension, or (4) any combination of a fine and suspension. (47 P.S. §4-471) However, where, as in this case, the license at issue has been revoked, the only possible penalty that can be imposed is an additional revocation. The effect of an additional revocation further delays a Licensee's future eligibility for a new liquor license.

For the foregoing reasons, a penalty of license revocation is imposed as an appropriate penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Heidelway, Inc., License Number R-AP-SS-EHF-16678, is revoked effective with the mailing date of this order.

Jurisdiction is retained.

Dated this 13TH day of January, 2016.



Richard O'Neill Earley, J.

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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.

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.