

Mailing Date: AUG 31 2016

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

PENNSYLVANIA STATE
POLICE, BUREAU OF
LIQUOR CONTROL ENFORCEMENT

v.

BELLEVUE PHILLY, LLC
200 S. BROAD ST.
PHILADELPHIA, PA 19102-3803

PHILADELPHIA COUNTY

In Re: Citation No. 15-1309C

BLCE Incident No. W01-498200

PLCB LID - 60017

PLCB License No. R-AP-SS-EHF-7340

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 August 4, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Bellevue Philly, LLC, License Number R-AP-SS-EHF-7340 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, March 8, 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 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on June 26, 2015, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, eighteen (18) years of age.

FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premises which began on June 26, 2015 and ended on June 29, 2015. A notice of violation letter dated July 6, 2015 was sent to the licensed premises by certified mail, return receipt requested to the address as noted on the records of the Liquor Control Board. That mailing was returned for insufficient address. A citation, dated August 4, 2015, was sent to the licensed premises by certified mail, return receipt requested. That mailing was returned as being undeliverable as addressed. The mailing was then sent by first class mail. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on January 20, 2016, by certified mail, return receipt requested, and by first class mail notifying them of the March 8, 2016 hearing. The certified mailing was returned unclaimed on March 22, 2016 (N.T. 11-15 and Exhibits B-1 and B-2).

2. On Friday, June 26, 2015 at 6:00 p.m., an officer from the Bureau entered the licensed premises in an undercover capacity and then texted other members of the compliance team to inform them that it was safe for the Underage Buyer (age 19) to enter. One female bartender was tending bar and rendering service of alcoholic beverages to thirty patrons. Underage Buyer No. 737 entered the premises and approached the bar. She ordered and was served one Miller Lite draft beer for \$2.50 by the female bartender, who did not request identification. When the transaction was complete, Underage Buyer No. 737 left the beer on the bar and exited the premises without consuming any alcohol (N.T. 8-10 and 15-18).

3. Another officer entered the premises and informed the female bartender that she had served alcohol to a minor (N.T. 11).

4. On June 29, 2015, a notification of non-compliance was sent to the licensed premises (Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied in that the notices were mailed to the address of record.

On June 26, 2015, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, eighteen (18) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since June 11, 2008, and has no record of prior violations.

DISCUSSION:

Despite numerous attempts to notify the Licensee of the hearing, no one appeared to contest the matter or to offer mitigating testimony. There is no record of the premises being closed or no longer operating. Under the circumstances a monetary penalty shall be imposed. The premises will also be required to become RAMP certified.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, Bellevue Philly, LLC, License Number R-AP-SS-EHF-7340, pay a fine of One Thousand Four Hundred Dollars (\$1,400.00) 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.

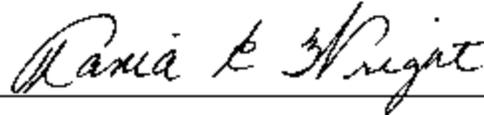
IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (90) days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

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Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d).

Jurisdiction of this matter is retained.

Dated this 26TH day of August, 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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Bellevue Philly, LLC
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Detach Here and Return Stub with Payment - Note Citation Number on Check

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

Credit/Debit Cards may be used: if you have already registered with PLCB+ you should be able to pay by Credit/Debit card; if you have not registered with PLCB+ you may obtain the information on how to register by sending an email message to:

RA-LBLICENSINGMOD@pa.gov

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