

Mailing Date: JUN 24 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 15-1448
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-490412
	:	
v.	:	PLCB LID No. 66269
	:	
COOPERS BAR AND GRILL, INC.	:	PLCB License No. R-AP-SS-9029
100 W. WYOMING AVE.	:	
PHILADELPHIA, PA 19140-1629	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 18, 2015. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-491(3), on April 28, 2015, by obtaining liquor from sources other than Pennsylvania State Stores.

A hearing was held on April 19, 2016, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. During an inspection of the licensed premises on June 24, 2015, liquor enforcement officers found a sales receipt from Roger Wilco Pennsauken, New Jersey, dated April 28, 2015, for the purchase of 16 bottles of liquor. The officers found bottles in Licensee's inventory which corresponded to the bottles described in the receipt (N.T. 7-8, 19, Exhibit B-3).

2. The officers reviewed Licensee's records of purchases made at Pennsylvania State Stores and did not find any purchases which they recognized as matching the sizes of the bottles listed in the receipt. When they pointed this out to Licensee's president, she said the receipt could have been mixed up from a private event that she had in her house (N.T. 8-9).

3. The receipt was in a manila file folder, along with other receipts from operating the business, receipts from certain stores in the area and state store receipts. These included an electric bill and store receipts from Target. There was a year's worth of liquor receipts. They were out of order and incomplete. The Roger Wilco receipt was on top and was the only out-of-state receipt in the folder, which altogether was about ½ inch thick. The folder was not in the premises when the officers began the inspection; the owner's father brought it from home to the premises during the inspection, perhaps half an hour after the officers arrived (N.T. 9-10, 21-23).

DISCUSSION:

When liquor enforcement officers inspect a Licensee's premises and ask to see the business records, they are likely to assume that the folder provided is responsive to their request. Usually they will not see receipts for anything other than the ordinary expenses of a licensed restaurant.

But in this case the first item, on the top of the pile of papers presented, was a receipt for the purchase of liquor in New Jersey. Licensee's president said that this was a personal receipt that "could have been mixed up" from a private event she had at her house.

But the officers found bottles in Licensee's liquor stock which matched the items in the receipt. They did not find items which they recognized as matching those items in Licensee's state store receipts. Can anyone blame them for thinking they have a good case?

At the hearing, counsel for Licensee demonstrated that the investigating officers did not know that 59.2 fluid ounces is equal to 1.75 liters. Had they known that, they might have seen that some of the liquor listed on the New Jersey receipt was also listed on Licensee's state store receipts. The only difference is that the PLCB refers to these bottles as 59.2 fluid ounce containers while Roger Wilco refers to them as 1.75 liter containers. They are the same bottle. Is the Bureau's case now weakened?

No, it is not. In the first place, the state store receipts presented by Licensee account for only five of the ten distinct brands on the New Jersey receipt. Licensee's defense is incomplete, and the problem of the New Jersey receipt remains. An explanation is required.

Licensee's president provided it. She testified that she bought this liquor for cash in New Jersey on April 28, 2015, but without any intention of using it in her business. Instead, it was to provide refreshment for a high school graduation party for as many as 100 people, to be held at the graduate's home in Lindenwold, New Jersey. But there were delays and illness and the party had to be rescheduled. It was finally held on May 23. In the meantime, the liquor remained in her trunk.

Licensee's president asks us to believe that she bought 27 liters of liquor (913 fluid ounces) to supply a high school graduation party for as many as 100 people. Granted there may have been some leftovers, but that is 9 ounces for every man, woman and child in attendance.

No, this purchase was made for the business. Even taken at face value, Licensee's explanation does not tell us why a receipt for out-of-state liquor would have been kept with the business records. Licensee's evidence did not refute the Bureau's case.

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 6, 2012, and has had one prior violation:

In re Citation No. 14-0734. \$550.00 fine.

1. Noncompliance with CLA. January 5, 31 and March 7, 2014.
2. Refilled liquor bottles. March 7, 2014.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Coopers Bar and Grill, Inc., License No. R-AP-SS-9029, shall pay a fine of five hundred dollars (\$500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 20TH day of JUNE, 2016.



David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

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 trust account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** If you are paying by guaranteed check, please make it 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

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.

Coopers Bar and Grill, Inc.