

Mailing Date: MAR 18 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 15-1584
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: W04-498019
v.	:	
	:	PLCB LID No.: 66925
	:	
RTB RESTAURANT ENTERPRISES,	:	PLCB License No.: R-AP-SS-14479
LLC	:	
T/A SAMMY'S FAMOUS CORNED	:	
BEEF	:	
564 FORBES AVE. NO. 1	:	
PITTSBURGH, PA 15219-2903	:	
	:	
ALLEGHENY COUNTY	:	

BEFORE: JUDGE RICHARD EARLEY

APPEARANCES:

BLCE COUNSEL: MICHAEL NICKLES, ESQUIRE
LICENSEE: NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 4, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against RTB Restaurant Enterprises, LLC, License Number R-AP-SS-14479, (hereinafter Licensee).

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §§4-491(1), 4-492(2), and 4-493(16), alleging that during the periods June 1 through 5, 8 through 12, 15 through 19, 22 through 26, 29 through July 2, and July 6, 2015, Licensee, by its servants, agents or employees, sold alcoholic beverages after its restaurant liquor license expired on May 31, 2015 and had not been renewed and/or validated.

An administrative hearing was held on this matter on Wednesday, February 10, 2016, at 2:45 p.m., at Two Parkway Center, Suite G-8, in Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee did not appear at the hearing.

I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Background:

1. Licensee is a corporation located in Allegheny County, Pennsylvania, and holds a restaurant liquor license. (N.T. p. 6)
2. The Bureau commenced its investigation of Licensee's premises on June 24, 2015, and completed its investigation on August 17, 2015. (N.T. p. 5; Ex. C-1).
3. The Bureau notified Licensee of the nature of the alleged violation disclosed by its investigation by letter dated August 18, 2015, which was sent by certified mail to Licensee's address of record. It was not acknowledged but did not come back as undeliverable. (N.T. pp. 5-6; Exs. C-1, C-2)
4. The citation was issued on September 4, 2015, and was sent by certified mail. (N.T. p. 7; Exs. C-3, C-4)

Sales After License Expired:

5. Licensee's liquor license expired on May 31, 2015. (N.T. p. 8) Board records reveal Licensee renewed its license on July 24, 2015.
6. On July 6, 2015, an undercover Liquor Enforcement Officer entered Licensee's premises and purchased a 12-oz. bottle of Miller Lite beer from the bartender. (N.T. p. 9)
7. Later, the Officer contacted Licensee and spoke with Chuck Perlik, who told the Officer that he was in charge. The Officer advised him that Licensee's liquor license expired and the sale of alcoholic beverages must cease until authority to operate is obtained. (N.T. pp. 9-10)
8. On July 8, 2015, the Officer spoke with LLC member/manager, Raymond Burg. The Officer informed Mr. Burg that Licensee's license had expired. Mr. Burg said that he would take immediate action. (N.T. p. 10)
9. On August 3, 2015, the Officer conducted a routine inspection of Licensee's premises in the presence of Mr. Burg. The Officer reviewed Licensee's sales records which indicated that Licensee sold alcoholic beverages during the periods June 1 through 5,

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8 through 12, 15 through 19, 22 through 26, and 29 through July 2. (N.T. pp. 11-13, Ex. C-5)

10. The Board sent the Bureau an attestation certifying that Licensee did not have a valid liquor license or a temporary authority to operate from June 1 through July 6, 2015. (N.T. pp. 13-14, Ex. C-6)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by the Liquor Code at 47 P.S. §4-471 have been satisfied.
2. Sustained as charged.

DISCUSSION:

The Bureau proved by a preponderance of substantial evidence that Licensee sold alcohol on the dates alleged without a valid liquor license (Omicron Enterprises, 449 A.2d 857 (Pa.Cmwlth. 1982)). This is a significant violation under the Liquor Code. As such, Licensee's unexplained choice to forgo participation in these proceedings is troubling. If Licensee meant to agree to the charges, it could have saved the court considerable time and expense by submitting a waiver. Not participating simply assured the most expensive, inefficient resolution of the matter.

PRIOR RECORD:

Licensee has been licensed since August 28, 2012, and has had two prior violations:

IN RE:

Citation No. 13-0391. Fine \$250.00.

1. Operated the licensed establishment without a valid health permit or license.
November 27, 2012 through January 14, 2013.

Citation No. 13-1154. Fine \$150.00.

1. Board-approved manager failed to complete RAMP training within 180 days.
April 1 through 24, 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 \$1,000.00 to \$5,000.00, (3) a license suspension, or (4) any combination of a fine and suspension. (47 P.S. §4-471)

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For the foregoing reasons, a fine of \$3,000.00 shall be imposed as an appropriate penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that RTB Restaurant Enterprises, LLC, t/a Sammy's Famous Corned Beef, License Number R-AP-SS-14479, pay a fine of \$3,000.00 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 4TH day of MARCH, 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.

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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

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