

Mailing Date: SEP 23 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 15-1921
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-498864
	:	
v.	:	PLCB LID No. 33379
	:	
149 S & M, INC.	:	PLCB License No. R-AP-SS-5023
149 BROWN ST.	:	
PHILADELPHIA, PA 19123-3022	:	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 November 3, 2015. There are four counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on August 22, 2015, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the service of alcoholic beverages is required to cease.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on August 22, 2015, by permitting patrons to possess alcoholic beverages in and/or remove them from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The third count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on August 22, 2015, by permitting patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m.

The fourth count alleges that Licensee violated the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on August 22, 2015, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

A hearing was held on Tuesday, August 23, 2016, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Liquor enforcement officers entered the licensed premises on August 22, 2015, at 12:35 a.m. and saw about 30 patrons attended by two bartenders. The officers went to the outside serving area, and then returned to the inside portion of the premises a little before 2:00 a.m. At 2:00 a.m. one of the bartenders began closing out the tabs of some of the customers, and some of them began leaving through the main entrance. Others, including the officers, remained (N.T. 6-8).

2. At 2:05 a.m. a man in an airline uniform knocked on the door, and was admitted by the doorman. The man went to the bar and spoke to a bartender, who brought him a draft beer and a double shot of whiskey. At 2:08 a.m. the officers purchased bottles of beer and shots of whiskey, for which they paid (N.T. 10-11).

3. At 2:16 a.m. the doorman admitted two patrons; a bartender served them each beer and whiskey. At 2:23 a.m. one of the officers bought two bottles of beer. At 2:40 a.m. the doorman admitted another patron, who purchased a six-pack of bottled beer. When the officers left at 2:45 a.m. there were still five patrons in the premises, most of them in possession of beer (N.T. 12-13).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since October 6, 1994, and has had prior violations as follows:

In re Citation No. 00-1652. \$500.00 fine.

1. Loudspeakers could be heard outside.

In re Citation No. 14-1745. \$500.00 fine.

1. Permitted use of marijuana on the licensed premises. July 11, 2014.

In re Citation No. 14-1934C. \$1,450.00 fine and RAMP certification mandated.

1. Sold alcohol to a minor. August 22, 2014.
2. Operated without a valid health permit. May 1 through August 24, 2014.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in the first, second and third counts, any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in the fourth count, any fine must be in the \$1,000.00 to \$5,000.00 range. Penalties are assessed as follows:

Count 1 – a fine of \$300.00.

Count 2 – a fine of \$300.00.

Count 3 – a fine of \$300.00

Count 4 – a fine of \$1,000.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 149 S & M, Inc., License No. R-AP-SS-5023, shall pay a fine of one thousand nine hundred dollars (\$1,900.00) 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 16TH day of September, 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 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.