

Mailing Date: JUL 13 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 15-2112
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W02-502543
	:	
v.	:	PLCB LID No. 57113
	:	
CFM MCDONOUGH AND SON, INC.	:	PLCB License No. E-SS-3232
2409 OLYPHANT AVE.	:	
SCRANTON, PA 18509-1101	:	Lackawanna County

JUDGE SHENKLE  
BLCE COUNSEL: Craig A. Strong, Esq.  
LICENSEE: Gary McDonough

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on December 11, 2015. The citation alleges that Licensee violated the Liquor Code, 47 P.S. §§4-492(2), 4-492(3) and 4-493(16), during the period October 1 through 4, 2015, by selling alcoholic beverages after its eating place malt beverage expired on September 30, 2015, and had not been renewed and/or validated.

A hearing was held on June 8, 2016, in Scranton, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

**FINDINGS OF FACT:**

1. The PLCB notified the Bureau of Liquor Control Enforcement that this license had expired. On October 5, 2015, a liquor enforcement officer purchased a can of beer in the licensed premises (N.T. 5-7).

2. Another officer then entered the premises and informed Licensee's clerk of the violation. The liquor license on the wall had expired on September 30, 2015. Licensee's sole corporate officer obtained temporary authority to operate on October 5, 2015. He admitted that alcoholic beverages were sold in the premises every day since the license expired (N.T. 7-9).

3. Licensee had mailed its renewal application and made full payment of the fees due on May 28, 2015, and had no warning or indication that there was any problem with it (N.T. 10-12).

**CONCLUSIONS OF LAW:**

Sustained as charged.

DISCUSSION:

It is apparent that there was an administrative problem of some type within the offices of the Pennsylvania Liquor Control Board, because in the process which followed the Bureau's visit to the premises there was no pending issue identified which needed resolution, and the temporary authority and renewed license were issued immediately.

I regret that I am unable to grant Licensee any relief in this situation. Ever since the repeal of Prohibition, all sales of alcoholic beverages in Pennsylvania have been strictly regulated and require a current license, properly posted on the wall of the premises where the sales take place.

It is Licensee's responsibility to see to it that the license is current. Although the Board has a procedure in place to notify the Bureau of the expiration of a license, that same courtesy is not extended to licensees, unfortunately.

PRIOR RECORD:

Licensee has been licensed since October 1, 2006, and has had prior violations as follows:

In re Citation No.07-1322. \$1,250.00 fine and RAMP training mandated.

1. Sales to a minor. January 13, 2007.
2. Minor Frequenting. January 13, 2007.

In re Citation No. 12-1159C. \$1,500.00 fine and RAMP certification mandated.

1. Sales to a minor. July 15, 2012.

In re Citation No. 15-1347. \$100.00 fine.

1. Not a *bona fide* restaurant (insufficient seating). June 6, 2015.

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 \$1,000.00 to \$5,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, CFM McDonough and Son, Inc., License No. E-SS-3232, shall pay a fine of one thousand dollars (\$1,000.00) 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 8<sup>TH</sup> day of JULY, 2016.



David L. Shenkle, J.

**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**

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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](mailto:RA-LBLICENSINGMOD@pa.gov).