

Mailing Date: SEP 02 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 16-0037
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-504718
	:	
WESTY'S, INC.	:	
T/A WEST TAVERN	:	PLCB LID - 23603
1440-1442 CALOWHILL ST.	:	
PHILADELPHIA, PA 19130-4018	:	
	:	PLCB License No. R-SS-2119
	:	
PHILADELPHIA COUNTY	:	

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 January 19, 2016, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Westy's, Inc., t/a West Tavern, License Number R-SS-2119 (hereinafter "Licensee").

Westy's, Inc.
t/a West Tavern
In Re: Citation No. 16-0037

An Administrative hearing was held on Tuesday, June 7, 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 Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16), in that during the period November 1 through December 7, 2015, Licensee, by its servants, agents or employees, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2015 and had not been renewed and/or validated.

FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premises which began on December 7, 2015 and ended on December 13, 2015. A notice of violation letter dated December 24, 2015 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation, dated January 19, 2016, was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on April 19, 2016, by certified mail, return receipt requested, and by first class mail notifying them of the June 7, 2016 hearing. That mailing was signed as received on April 21, 2016 (N.T. 4 and 9-11 and Exhibits B-1 and B-2).

2. On Monday, December 7, 2015 at 11:50 a.m., an officer from the Bureau entered the licensed premises. The premises appeared to be open and operating. One male bartender was tending bar and rendering service of alcoholic beverages to four patrons. The officer ordered and was served one draft beer by the bartender. The officer paid for the drink and the sale was rung up on the cash register and the money placed inside (N.T. 7).

3. When the transaction was completed, the officer identified herself to the bartender and informed him that the premises' liquor license was expired and that no temporary authority had been obtained from the PLCB. The bartender contacted the Board-approved manager of the premises, by phone, and relayed the officer's message. The Board-approved manager agreed to contact the officer by email the following day (N.T. 7-9).

4. A Certification/Attestation from the PLCB states that the premises' liquor license expired on October 31, 2015, and that the premises did not possess authority to operate between November 1, and December 7, 2015 (N.T. 9-12 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Westy's, Inc.
t/a West Tavern
In Re: Citation No. 16-0037

During the period November 1 through December 7, 2015, Licensee, by its servants, agents or employees, sold alcoholic beverages after the Restaurant Liquor License expired on October 31, 2015 and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, 47 P.S. §§4-491(1), 4-492(2) and 4-493(16).

PRIOR RECORD:

Licensee has been licensed since February 7, 1990, and has a record of prior violations as follows:

In Re:

Citation No. 11-2178. \$150.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
September 14, 2011.
2. Paid for purchases of malt or brewed beverages with other than Licensee's checks.
August 3 and September 14, 2011.

Citation No. 13-1366. \$350.00 fine.

1. Used loudspeakers or devices whereby the sound of music could be heard outside beyond the Licensee's property line.
March 9, 2013.
2. Sales on a portion of the premises not covered by the license.
March 9, 2013.

Citation No. 14-1225. \$350.00 fine and Verification conditions corrected.

1. Board-approved manager failed to complete RAMP training within 180 days.
May 4 through 20, 2014.
2. Operated the licensed establishment without a valid health permit or license.
May 1 through 20, 2014.

DISCUSSION:

Licensee did not appear in Court to offer a defense or mitigation of the charges. After consideration of the facts and prior history, a moderate monetary penalty shall be imposed.

Westy's, Inc.
t/a West Tavern
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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.

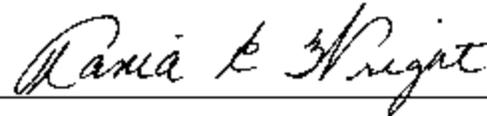
Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, Westy's, Inc., t/a West Tavern, License Number R-SS-2119, pay a fine of One Thousand Two Hundred Fifty Dollars (\$1,250.00) 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.

Jurisdiction of this matter is retained.

Dated this 29TH 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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Westy's, Inc.
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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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Westy's Inc.