

Mailing Date: DEC 21 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 16-0165
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-505729
	:	
CAPT. E. W. LYNCH-SGT. H. K.	:	
BRUSH	:	PLCB LID - 1701
VFW NO. 1521	:	
705 EAST 11 <sup>TH</sup> STREET	:	
CHESTER, PA 19013-3718	:	PLCB License No. C-3655
	:	
	:	
DELAWARE 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 February 16, 2016, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Capt. E. W. Lynch-Sgt. H. K. Brush VFW No. 1521, License Number C-3655 (hereinafter "Licensee").

Capt. E. W. Lynch-Sgt. H.K. Brush  
VFW No. 1521  
In Re: Citation No. 16-0165

An Administrative hearing was held on Wednesday, November 9, 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 December 1, 2015 through January 5, 2016, Licensee, by its servants, agents or employees, sold alcoholic beverages after the Club Liquor License expired on November 30, 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 January 5, 2016 and ended on January 26, 2016. A notice of violation letter dated January 28, 2016 was sent to the licensed premises by certified mail, return receipt requested. That mailing was returned unclaimed. A citation, dated February 16, 2016, was sent to Joseph F. Neely at 748 3<sup>rd</sup> Avenue, Prospect Park, PA 19076 by certified mail, return receipt requested. That mailing was returned unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on September 20, 2016, by certified mail, return receipt requested, and by first class mail notifying them of the November 9, 2016 hearing. That mailing was signed as received on September 23, 2016 (N.T. 4, 9-12 and Exhibits B-1 and B-2).

2. On Tuesday, January 5, 2016 at 12:35 p.m., an officer from the Bureau arrived at the licensed premises, along with another officer. He knocked on the door and was buzzed into the premises. One female bartender, later identified as Tisha Myers, was tending bar and rendering service of alcoholic beverages to one patron. The patron, later identified to be Mr. Swanson, the club steward, was in possession of and consuming one twelve-ounce bottle of Budweiser beer. The officer observed money on the bar in front of this patron. The female bartender asked the officers if they had membership cards and the officers replied that they did not. The female bartender then stated that she could not serve the officers because they were not club members (N.T. 6-9).

3. The officer then identified himself and asked to speak with a club officer. He was referred to Board-approved manager, Matthew Swanson. The officer informed Mr. Swanson and Ms. Myers that the premises' liquor license had expired. Ms. Myers contacted Joseph Neely, a club officer, by telephone. The officer informed them all that the premises could not serve alcohol until authority had been obtained from the PLCB. Mr. Swanson gave a written statement acknowledging that the premises was open and selling alcohol every day between December 1, 2015 and January 5, 2016. The officer exited the premises at 1:00 p.m. (N.T. 8-9).

#### CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

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VFW No. 1521  
In Re: Citation No. 16-0165

During the period December 1, 2015 through January 5, 2016, Licensee, by its servants, agents or employes, sold alcoholic beverages after the Club Liquor License expired on November 30, 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 October 14, 1938, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

In Re:

Citation No. 91-2865. \$400.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.

Citation No. 95-1042. \$500.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.

Citation No. 06-1546. \$600.00 fine.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.

Citation No. 14-0709. \$700.00 fine.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.  
February 26, 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.

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:

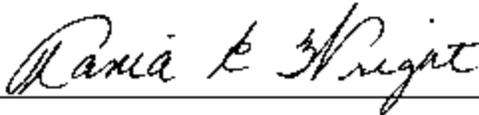
Capt. E. W. Lynch-Sgt. H.K. Brush  
VFW No. 1521  
In Re: Citation No. 16-0165

ORDER

THEREFORE, it is hereby Ordered that Licensee, Capt. E. W. Lynch-Sgt. H. K. Brush VFW No. 1521, License Number C-3665, 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 8<sup>TH</sup> day of December, 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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**Detach Here and Return Stub with Payment - Note Citation Number on Check**

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

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