

Mailing Date: SEP 21 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 16-0342
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-504546
	:	
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 March 15, 2016. There are three counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on January 1, 2016, 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 January 1, 2016, 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. §§4-406(a)(2) and 4-493(16), on January 1, 2016, 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:**

On Friday, January 1, 2016, liquor enforcement officers arrived at the licensed premises at 2:00 a.m. They found the door locked, but knocked on it. A man opened it from inside and let the officers in, where they saw about 25 patrons attended by one bartender. One of the officers approached the bar at 2:05 a.m. and ordered a shot of whiskey; it was served to her for \$3.00. At 2:10 a.m. the bartender served draft beer to a man seated at the bar. When the officers left at 2:35 a.m. there were still ten patrons in the premises, several of them in possession of beer. The officers maintained outside surveillance until 2:45 a.m., and did not see any patrons enter or leave the establishment during that time (N.T.7-10)

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 and second counts, any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in the third count, any fine must be in the \$1,000.00 to \$5,000.00 range. Penalties are assessed as follows:

Counts 1 & 2 (merged for penalty) – a fine of \$300.00.

Count 3 – 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 three hundred dollars (\$1,300.00) 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 15<sup>th</sup> day of September, 2016.

  
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David L. Shenle, 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).