

Mailing Date: MAY 10 2019

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

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|----------------------------|---|------------------------------------|
| PENNSYLVANIA STATE POLICE, | : | |
| BUREAU OF LIQUOR CONTROL | : | IN RE: CITATION NO. 18-1920 |
| ENFORCEMENT (BLCE) | : | |
| | : | |
| | : | BLCE Incident No. PA 2018-1286241 |
| v. | : | |
| | : | |
| TRI BEER, LLC | : | PLCB LID - 68570 |
| 1 PARKSIDE AVE. STORE #6 | : | |
| SHILLINGTON PLAZA | : | |
| SHILLINGTON, PA 19607-1124 | : | PLCB License No. D-SS-3461 |
| | : | |
| BERKS COUNTY | : | |

ADJUDICATION

BEFORE: John H. Pietrzak, ALJ
FOR BLCE: Roy Harkavy, Esquire
LICENSEE: Jacob Merrill, Pro Se

BACKGROUND:

This proceeding arises out of a citation that was issued on December 28, 2018, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (BLCE) against TRI BEER, LLC, (Licensee).

The citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 9004 and 9007 of the Malt Beverage Tax Law [72 P.S. §§9004 and 9007] in that Licensee failed and/or refused to file, in a timely manner, monthly revenue report(s) with the Commonwealth of Pennsylvania, Department of Revenue for the period November 1, 2017 through November 20, 2018.

Licensee has executed a Statement of Waiver, Admission and Authorization in which Licensee: admits to the violation(s) charged in the citation and that the BLCE complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the BLCE and prior citation history, and waives the right to appeal this Adjudication.

On March 27, 2019, counsel for the Bureau filed a Motion to Withdraw Section 9004 of the Malt Beverage Tax Law from the Citation. The Motion was granted.

I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. During the period November 1, 2017 through November 20, 2018, Licensee did not file any monthly revenue reports with the PA Department of Revenue.

2. On November 12, 2018, a BLCE officer conducted a routine inspection of the licensed premises and met with Licensee's corporate member and Board approved manager, Jacob Merrill. The officer reviewed Licensee's business records for the period November 12, 2017 through November 12, 2018. The officer asked to see Licensee's monthly revenue reports. Mr. Merrill stated that he did not think he had ever prepared them.

CONCLUSION(S) OF LAW:

The Bureau has failed to prove that the Licensee was required to file monthly revenue reports for the period of November 1, 2017 through November 1, 2018. The charge in the citation is **dismissed**.¹

DISCUSSION:

This citation charged the Licensee, a Distributor, with violations of the Malt Beverage Tax Law's monthly reporting requirements. The Malt Beverage Tax Law, at 72 P.S. §9003, imposes a tax upon any manufacturer whose malt or brewed beverages are sold in the Commonwealth or any "person" who ships or transports malt or brewed beverages into the Commonwealth for sale, delivery or storage (i.e. an importing distributor).

The citation included reference to two sections of the Malt Beverage Tax Law, §9004 and §9007, which contain separate monthly reporting requirements. As noted in previous adjudications from this office dismissing identical charges brought against other distributor licensees, §9004 applies only to manufacturers and Public Service Licensees and requires the filing of monthly reports of the sales of malt or brewed beverages only by those licensees. See *BLCE v. Top of the Barrel, Inc., Citation No. 18-1190*; *BLCE v. VRAJ, Inc., Citation No. 18-1495*; *BLCE v. Northwood Beverage, LLC, Citation No. 18-1708*; *BLCE v. M.L. Beer, Inc. Citation No. 18-1443*.

¹During a conference call held on April 4, 2019 with the parties, I stated I would sustain the citation. Further review of the file compelled me to dismiss the citation for lack of factual proof.

Those previous adjudications did not, however, address §9007 as it applies to distributor licensees. Section 9007 imposes a monthly reporting requirement upon “every transporter for hire, bailee for hire, warehouseman, distributor and retail licensee” to file monthly reports “of malt or brewed beverages which were imported and came to rest or storage at his place of business in this Commonwealth during the preceding month, or which were transported from a point outside the Commonwealth to a point within the Commonwealth.”

The Malt Beverage Tax Law does not separately define or identify distributors as opposed to importing distributors but does define “Distributor” broadly enough to encompass both. *See*, §9002. Therefore, the inclusion of “distributor” in §9007 clearly imposes the monthly reporting requirement upon the Licensee in this case, and every other distributor licensee in the Commonwealth, if they received malt or brewed beverages that were imported or transported into Pennsylvania.

The stated purpose of the report filing requirement under §9007 is “for the purpose of verifying the tax payments required by this article.” In other words, the distributor licensee’s monthly report of malt or brewed beverages received from an importing distributor will ostensibly be used by the Department of Revenue to verify that the Importing Distributor has paid tax on the proper amount of malt or brewed beverages. The monthly filing requirement does not verify taxes owed or paid by the distributor licensee as the Malt Beverage Tax Law does not impose any tax on distributor licensees.

There is no similar requirement in the Liquor Code or PLCB Regulations requiring distributor licensees to maintain reports of malt or brewed beverages which were imported into the Commonwealth and which came to rest at the distributor’s premises. The only provision of which I am aware that implicates the need for distributor licensees to adhere to the reporting and recordkeeping requirement of §9007 of the Malt Beverage Tax Law is PLCB Regulation 9.107 titled Federal and State reports and forms. Regulation 9.107 requires distributors and importing distributors to maintain “copies of reports or forms required by Federal or State governmental agencies related to the licensed operation for a period of at least two years.” This regulation clearly encompasses the report required by §9007.

Nevertheless, the Bureau has failed to provide factual proof of a critical nature. Section 9007 requires reporting only of malt or brewed beverages “which were imported and came to rest or storage at the distributor’s place of business in the Commonwealth during the preceding month, or which were transported from a place outside the Commonwealth to a point within the Commonwealth.”

The Bureau’s submission states only that the officer requested the licensee’s monthly revenue reports and that Mr. Merrill was unable to produce them and stated that he did not think he had ever prepared them.

The Bureau's submission contains no information concerning the origin of the malt or brewed beverages possessed by the Licensee during the period charged. To sustain its burden of proof, the Bureau must establish that the licensee was required to file the subject reports because malt or brewed beverages that were imported or transported into the Commonwealth came to rest at its premises.

ORDER

IT IS HEREBY ORDERED that Citation No. 18-1920 be DISMISSED.

Jurisdiction is retained.

Dated this 29TH day of April, 2019.



John H. Pietrzak, ALJ

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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.