

Mailing Date: MAY 15 2019

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 19-0073
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No.: PA 2018-1045299
v.	:	
	:	
GRGBOOKIES LLC	:	PLCB LID No.: 69514
125 WALNUT ST	:	
PHILADELPHIA PA 19106-3016	:	PLCB License No.: R-AP-SS-15472
	:	
PHILADELPHIA COUNTY	:	
	:	
	:	
	:	
	:	

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BLCE COUNSEL: ERIK S. SHMUKLER, ESQ.
LICENSEE COUNSEL: MATTHEW G. LAVER, ESQ.

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 22, 2019, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against GRGBookies, LLC, License Number R-AP-SS-15472, (Licensee).

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-404, alleging that during the period April 4, 2015 through December 6, 2018, Licensee, by its servants, agents or employees, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

Licensee has executed a Statement of Admission, Waiver and Authorization in which Licensee: admits to the violation(s) charged in the citation, agrees that the Bureau 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 Bureau and prior citation history, and waives the right to appeal this Adjudication.

Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee applied to purchase and transfer Restaurant Liquor License No. R-15472 for use at its premises located at 125 Walnut Street, Philadelphia. Licensee's application was opposed by intervenor Old City District on the basis of an "overabundance of liquor licenses" in the area and "the potential of excessive noise." (Conditional Licensing Agreement (CLA), ¶4, p. 1.) The CLA is attached as Exhibit 1.
2. The Board informed Licensee it would be "obligated to refuse a transfer application if it...would have an adverse effect on the welfare, health, peace and morals of the neighborhood." (Id., ¶5, p. 2.)
3. In an attempt to address the concerns of Old City District, and the Board, Licensee agreed to enter "an agreement with the Board imposing conditions on both the license as well as the premises." (Id., ¶6, p. 2)
4. Among the conditions agreed to by Licensee is the obligation to become RAMP "compliant" within 90 days of the Board's approval of the CLA. Additionally, Licensee agreed to remain compliant. (Id., ¶7(a), p. 2.)
5. Finally, the CLA specifies that its terms will not be fully executed and binding on the parties until it is signed by both and "the Board approves the underlying application." (Id., p. 8.)
6. Licensee executed the CLA on October 2, 2014. The Board's Director of Licensing, Tisha Albert, executed the CLA on October 14, 2014. Board records reflect that Licensee's application to purchase and transfer this liquor license was approved October 16, 2014.
7. Under the terms of the CLA Licensee had 90 days from October 16, 2014 to become RAMP compliant, in other words, by January 14, 2015.
8. On October 31, 2018, Officers entered Licensee's premises and identified themselves to Chi Yorizumi, employee-in-charge, and spoke to her about the premises' RAMP certification status. Ms. Yorizumi contacted Board-approved manager Dan Cestare by phone. Mr. Cestare was not aware of RAMP requirements in Licensee's CLA.
9. On November 21, 2018, Mr. Cestare emailed the Officer and advised him that Licensee was attempting to complete the RAMP certification process as soon as possible.
10. The Bureau of Alcohol Education verified that it possessed no record indicating Licensee was RAMP certified between April 4, 2015 and December 6, 2018. Its records reveal that Licensee became RAMP certified on December 7, 2018. I have found no

evidence in Board records before December 7, 2018, that Licensee became RAMP certified at any time after the Board approved its application.

CONCLUSION OF LAW:

Licensee operated from January 14, 2015 to December 7, 2018, a period exceeding three years and 10 months, without becoming RAMP certified as required by its CLA. Sustained only as to the dates of January 22, 2018, to December 7, 2018, in accordance with §471(a) of the Liquor Code and Mallios v. BLCE, 633 A.2d 1163 (Pa. 1993).

PRIOR RECORD:

Licensee has been licensed since October 15, 2014 and has had two prior violations:

IN RE:

Citation No. 06-0082. Fine \$1,000.00.

1. Sales after the license expired and had not been renewed and/or validated.
December 7, 2005.

Citation No. 09-0036. Fine \$400.00.

1. Operated the licensed establishment without a valid health permit or license.
December 19, 2008.

DISCUSSION:

The duration of Licensee's violation is unusually long. As a result, I informed the parties that if I sustained the citation I would impose a penalty exceeding the recommendation (\$250.00). Initially, Licensee requested to withdraw its waiver and proceed with a hearing. I held a phone conference with the parties to discuss Licensee's legal arguments and to schedule a due-date for its submission of a pre-hearing memorandum. Licensee acknowledged it did not dispute the facts and did not have a defense to the citation. Rather, it wished to have an opportunity to present mitigating facts. Ultimately, the parties agreed to submit mitigation in writing and to proceed with Licensee's waiver.

Licensee's sole argument in favor of mitigation is that rather than being delinquent in its CLA RAMP obligations for over three years and 10 months, it was actually only delinquent since December 3, 2017, a period of slightly more than a year. Licensee bases this argument on the belief that Licensee executed the CLA on October 2, 2017, based on the handwritten date by its member's signature. (See CLA, p. 8.)

Licensee's argument is not consistent with Board records. The purpose of the CLA was expressly stated. It established pre-conditions necessary to secure the Board's approval of its applications to own and transfer the liquor license to a new location. Thus, the CLA had to be executed before the Board would approve Licensee's application. The handwritten date on the CLA, despite looking at first glance as "2017," can only be a hastily written "2014." Furthermore,

GRGBOOKIES LLC
IN RE CITATION NO. 19-0073

references to the CLA appear in Board records long before 2017, something most easily explained by its 2014 execution. In any event, the triggering event for Licensee's 90 days to secure RAMP compliance is the Board's approval of Licensee's application, not the execution of the CLA. Board approval happened on October 16, 2014.

PENALTY:

For violations of the type found in this case, the Liquor Code permits any of the following penalties: (1) a license revocation, (2) a fine in the range of \$50.00 to \$1,000.00, (3) a license suspension, or (4) any combination of a fine and suspension. (47 P.S. §4-471) In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violations as charged in this citation and has waived the right to a hearing and appeal.

Counsel for the Bureau and counsel for Licensee concur in a recommendation to this court that a fine in the amount of \$250.00 be imposed as an appropriate penalty in this case. I rejected the recommendation because it falls below the amount normally imposed for a first violation of this type, and because of the length of time Licensee failed to honor its operating conditions. Therefore, I am imposing a penalty of \$700.00.

ORDER:

THEREFORE, it is hereby ordered that GRGBookies, LLC, License Number R-AP-SS-15472, pay a fine of \$700.00 within 20 days of the mailing date of this Order. In the event the fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Jurisdiction is retained.

Dated this 6TH day of MAY, 2019.



Richard O'Neill Earley, J.

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NOTE: IF YOU WANT THE ADMINISTRATIVE LAW JUDGE TO RECONSIDER THIS ADJUDICATION, YOU MUST SUBMIT A WRITTEN APPLICATION AND A NONREFUNDABLE \$25.00 FILING FEE. BOTH MUST BE RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE, (PLCB - OFFICE OF ADMINISTRATIVE LAW JUDGE, BRANDYWINE PLAZA, 2221 PAXTON CHURCH ROAD, HARRISBURG, PA 17110-9661) WITHIN 15 DAYS OF THIS ADJUDICATION'S MAILING DATE. YOUR APPLICATION MUST DESCRIBE THE REASONS FOR RECONSIDERATION. THE FULL REQUIREMENTS FOR RECONSIDERATION CAN BE FOUND IN TITLE 1 PA. CODE §35.241.

Detach Here and Return Stub with Payment – Note Citation Number on Check

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.** Please make your guaranteed check 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 registered with PLCB+ you may pay by Credit/Debit card at www.lcb.pa.gov by following the PLCB+ link. 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.

In Re Citation No. 19-0073
GRGBookies, LLC

EXHIBIT 1

CLA

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U9514-3A-2014

CONDITIONAL LICENSING AGREEMENT (R-15472-1)

This Conditional Licensing Agreement ("Agreement") is made between the Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board ("Board"), located at Capital and Forster Streets, Harrisburg, Pennsylvania 17124, and GRGBookies LLC ("GRGBookies"), applicant for transfer of Restaurant Liquor License No. R-15472 (LID 69514), for use by it at premises located at 125 Walnut Street, Philadelphia, Pennsylvania 19106-3016. The Board and GRGBookies stipulate to the following:

1. GRGBookies is the applicant for the transfer of Restaurant Liquor License No. R-15472 (LID 69514), for use by it at premises located at 125 Walnut Street, Philadelphia, Pennsylvania 19106-3016.
2. The license is currently held by Ciocca, LLC (LID 54003), for use by it at premises located at 13023 Bustleton Avenue, Philadelphia, Pennsylvania 19116-1672.
3. Old City District filed a petition to Intervene, in response to the application for transfer, which has raised objections to the transfer of the license.
4. The concerns raised by the petition to intervene relate to the overabundance of liquor licenses in this area and the potential of excessive noise.

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5. Under section 404 of the Liquor Code, [47 P.S. § 4-404], the Board is obligated to refuse a transfer application if it finds that an approval of that application would have an adverse effect on the welfare, health, peace and morals of the neighborhood within five hundred (500) feet of the proposed licensed premises.

6. GRGBookies, in an attempt to assuage the concerns of the Old City District, is willing to enter into an agreement with the Board imposing conditions on both the license as well as the premises.

7. The Board and GRGBookies, therefore, agree that the following conditions will be placed on Restaurant Liquor License No. R-15472, as well as the premises:

- a. Within ninety (90) days of the approval of this Agreement, GRGBookies shall become compliant with and remain compliant with the responsible alcohol management provisions of the Liquor Code including, but not limited to:
 - i. New employee orientation;
 - ii. Training for alcohol service personnel;
 - iii. Manager/owner training;
 - iv. Displaying of responsible alcohol service signage; and
 - v. Certificate of compliance by the Board's Bureau of Alcohol Education.

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For purposes of this section, days in which the license is in safekeeping shall not be counted against the ninety (90)-day deadline;

- b. GRGBookies shall not apply for nor accept a "cabaret" license from the City of Philadelphia;
- c. Two (2) or more adjudicated citations for violating section 493(34) of the Liquor Code during any two (2)-year licensing term, shall be a violation of this Agreement. For purposes of this section, "adjudication" or "adjudicated" shall mean the issuance of a decision and order, after the effective date of this Agreement, by the Office of the Administrative Law Judge or any other tribunal, affirming the citation without respect to any appeals of such adjudication;
- d. GRGBookies shall not sell alcohol for off-premises consumption;
- e. GRGBookies shall not apply for, nor will the Board approve, any other class of liquor license at the premises;

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- f. GRGBookies shall not apply for an extended hours food permit from the Board nor will the Board issue such a permit to GRGBookies;
- g. GRGBookies shall not charge a cover charge at the door, or host or participate in any events at the licensed premises which require the purchase of a ticket in order to gain entrance to the premises;
- h. GRGBookies shall not use, hire or employ the services of any outside third party or the services provided by an outside third party to operate or conduct business or events at the licensed premises, nor use, hire or employ any outside third party to sell tickets at the door, or online or to charge patrons for food, alcohol and/or entertainment;
- i. GRGBookies will not use any type of banners, signs or other types of display on the exterior of the premises or within fifty (50) feet of the premises that advertise the price and/or availability of alcohol. Notwithstanding the foregoing, this condition shall not apply to the display of menus, the advertising

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of food specials and exterior signage that identifies the restaurant;

j. GRGBookies shall limit its happy hours, as that term is defined in the Liquor Code, to no more than two (2) hours each day and it shall cease its happy hours by 8:00 p.m.; GRGBookies agrees that it will limit the daily drink specials authorized by 40 Pa. Code § 13.102(b)(2) to one (1) specific alcoholic beverage a day;

k. GRGBookies will not use hand distributed flyers, handouts or handbills to advertise the licensed premises, except that this provision shall not prohibit the inclusion of flyers in check presenters;

l. GRGBookies shall maintain, at all times, seating at tables or booths for at least thirty (30) patrons, and seating at the bar for no more than twenty (20) patrons;

m. GRGBookies shall not exceed its established legal occupancy limit for the licensed premises;

ATTACHMENT 3
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n. In the event GRGBookies acquires a Sunday sales permit, GRGBookies agrees that it will cease selling or serving alcohol at the licensed premises by 11:00 p.m. on all Sundays, and that all patrons must vacate the licensed premises by 11:30 p.m. on all Sundays; and

o. GRGBookies shall not seek nor will the Board approve an extension of the licensed premises, unless GRGBookies provides at least thirty (30) days written notice to the Old City District. The Board will not accept an application to extend the licensed premises unless it is accompanied by a copy of the aforementioned written notice.

8. If the Board approves an application from GRGBookies to extend its license to include an outside area, that outside area will be subject to the following restrictions:

a. All tables and seating will be positioned at ground level and will not be elevated;

b. All tables and seating will be positioned directly and exclusively adjacent to the licensed premises;

ATTACHMENT 3
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- o. GRGBookies will not provide alcoholic beverage service at the outside across the sidewalk from the licensed premises;
- d. All patrons seated outside must order food in order to be served alcoholic beverages;
- e. GRGBookies agrees that it will not serve malt or brewed beverages in bottles at the outside area; and
- f. GRGBookies agrees that it will cease selling or serving alcohol in the outside seating area by 11:00 p.m. each day, and that all patrons must vacate the outside seating area by 12:00 midnight on all Mondays through Saturdays, and 11:30 p.m. on all Sundays.

9. Failure to adhere to this Agreement may result in citation by the Pennsylvania State Police, Bureau of Liquor Control Enforcement, and/or non-renewal of this license by the Board.

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10. These terms will remain in effect both on the license and on the premises unless and until a subsequent agreement is reached with the Board rescinding these restrictions.

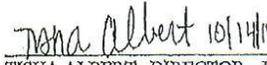
11. This Agreement is intended to create legally binding obligations, is entered into in Pennsylvania, and shall be construed in accordance of the law of the Commonwealth of Pennsylvania.

12. In the event that any provision of this Agreement is determined to be legally invalid, the affected provision shall be stricken from the Agreement and the remaining terms of the Agreement and their enforceability shall remain unaffected thereby.

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed pursuant to due legal action authorizing same. This Agreement will not be fully executed and binding on the parties unless and until all signatures are affixed hereto and unless and until the Board approves the underlying application.

 10/2/17

JOSE A. GARCES DATE
MEMBER
GRGBOOKIES LLC

 10/14/17
TISHA ALBERT, DIRECTOR DATE
BUREAU OF LICENSING
PENNSYLVANIA LIQUOR
CONTROL BOARD

APPROPRIATE 3
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