

Mailing Date: DEC 19 2019

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 19-0147
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. PA 2018-1273966
	:	
400 KELLY'S KORNER, INC.	:	
NW COR. 4 <sup>TH</sup> ST. &	:	PLCB LID - 66949
POWHATTAN AVE.	:	
TINICUM TWP.	:	
LESTER, PA 19113	:	PLCB License No. R-AP-SS-7530
	:	

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 5, 2019, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 400 Kelly's Korner, Inc., License Number R-AP-SS-7530 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, May 30, 2019, 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 count 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 on January 16, 2019, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when the restaurant liquor license was suspended at Citation No. 17-0039.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation which began November 2, 2018 and ended on January 17, 2019. A notice of violation letter was sent to the licensed premises on January 18, 2019, by certified mail returned receipt requested. The mailing was signed as received. The Bureau issued a Citation to the licensed premises dated February 5, 2019, by certified mail returned receipt requested. The mailing was signed as received (N.T. 12-14 and Exhibits B-1 and B-2).

2. This investigation resulted from a suspension check in reference to the Adjudication for Citation No. 17-0039. The suspension, ordered by Administrative Law Judge Wright for nonpayment of a \$500.00 fine, was to begin at 7:00 a.m. on Monday, January 14, 2019 and continue until further order (N.T. 6-7).

3. On Monday, January 14, 2019, at 1:15 p.m., an officer from the Bureau arrived at the licensed premises, along with another officer. He found the premises closed and locked with the suspension placard properly posted (N.T. 8).

4. On Tuesday, January 15, 2019, at 1:20 p.m., an unknown officer from the Bureau arrived at the premises and conducted a suspension check. He found the premises to be closed and locked with the suspension placard properly posted (N.T. 9).

5. On Wednesday, January 16, 2019, at 8:30 a.m., the officer contacted the Office of Administrative Law Judge in Plymouth Meeting, PA, by phone. He verified that the fine had not yet been paid and that the suspension was still in effect (N.T. 9).

6. On Wednesday, January 16, 2019, at 12:40 p.m., a Bureau officer entered the licensed premises which was open and operating. One female bartender was tending bar and rendering service of alcoholic beverages to two patrons. The officer ordered and was served one Miller High Life draft beer for \$2.00 by the female bartender. He exited the premises at 12:50 p.m. (N.T. 16-18).

7. Around 1:00 p.m., on that same day and date, the officer entered the licensed premises. There were two patrons with beer in front of them. The officer identified himself to Erin Kelly, Board-approved manager, and informed her that the premises' liquor license was currently suspended. Ms. Kelly stated that she thought the premises' license was only suspended for one day. The officer provided her with a copy of the Supplemental Order issued by Judge Wright suspending the premises' license until further order (N.T. 10-11).

8. The officer again contacted the Office of Administrative Law Judge in Plymouth Meeting by phone. He confirmed that the premises' fine had not yet been paid and that the suspension was still in effect (N.T. 10-11).

9. On Thursday, January 17, 2019, the officer contacted the Office of Administrative Law Judge in Plymouth Meeting by phone. He confirmed that Ms. Kelly had paid the fine in person immediately after his visit the previous day. The order vacating the suspension was then issued by Judge Wright and faxed to District Enforcement Office No. 1 (N.T. 11).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On January 16, 2019, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when the restaurant liquor license was suspended at Citation No. 17-0039, 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 2, 2012 and has a record of prior violations as follows:

In Re:

Citation No. 13-1277. \$200.00 fine and potential suspension held in abeyance pending compliance. Licensee failed to comply with ALJ Order and license suspended one day and thereafter until compliant.

1. Board approved manager failed to complete RAMP training within 180 days.  
April 22 through May 20, 2013.

Citation No. 14-0271. One day suspension.

1. Sales after the license expired and had not been renewed and/or validated.  
December 1 through 30, 2013.

Citation No. 15-1681. \$450.00 fine and one day suspension.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
July 18, 2015.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.  
July 18, 2015.
3. Sales between 2:00 a.m. and 7:00 a.m.  
July 18, 2015.
4. Smoked and/or permitted smoking in a public place where smoking was prohibited.  
July 14, 18 and 30, 2015.

Citation No. 15-2309C. \$1,400.00 fine, one day suspension and R.A.M.P. Certification mandated.

1. Sales to a minor.  
November 4, 2015.

Citation No. 16-1672. \$100.00 fine and two days suspension.

1. Sales during a time when the license was suspended.  
November 7, 2016.
2. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.  
November 7, 2016.

Citation No. 17-0039. \$500.00 fine and potential suspension held in abeyance pending compliance. Fine not paid and license suspended one day and thereafter until fine paid.

1. Failed to comply with the Order of the Administrative Law Judge mandating R.A.M.P. certification.  
November 4 through December 14, 2016.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period two years.  
December 7, 2016.

DISCUSSION:

Licensee's past record of violations mandate that a suspension be imposed for the present violation. Under the circumstances, a \$1,000.00 monetary penalty and one day suspension shall be imposed.

400 Kelly's Korner, Inc.  
In Re: Citation No. 19-0147

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.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four-year period, the penalty include license revocation or suspension.

Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, 400 Kelly's Korner, Inc., License Number R-AP-SS-7530, pay a fine of One Thousand Dollars (\$1,000.00) 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.

IT IS FURTHER ORDERED that the Restaurant Liquor License of 400 Kelly's Korner, Inc., License Number R-AP-SS-7530 (including all permits and Licensee Discount Card), be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Monday, March 9, 2020 and **ENDING** at 7:00 a.m. on Tuesday, March 10, 2020.

Licensee is directed on Monday, March 9, 2020, at 7:00 a.m., to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if a replacement placard is needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine and Good Spirits stores.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Tuesday, March 10, 2020, at 7:00 a.m., to remove the placard of suspension and return the license to its original wall location.

400 Kelly's Korner, Inc.  
In Re: Citation No. 19-0147

**Jurisdiction of this matter is retained.**

Dated this 13<sup>TH</sup> day of December, 2019.



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 at [www.lcb.pa.gov](http://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](mailto:RA-LBLICENSINGMOD@pa.gov)

In Re: Citation No. 19-0147  
400 Kelly's Korner, Inc.