

Mailing Date: NOV 04 2019

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 19-0953
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: PA 2019-554343
v.	:	
	:	
E S A D INC	:	PLCB LID No.: 41036
T/A JUST A TAVERN	:	
508 BROAD AVE	:	PLCB License No.: R-AP-SS-2450
NORTH BELLE VERNON PA 15012-1406	:	
	:	
WESTMORELAND COUNTY	:	
	:	
	:	

**BEFORE:** JUDGE RICHARD O'NEILL EARLEY  
**BLCE COUNSEL:** NADIA L. VARGO, ESQ.  
**LICENSEE:** JEFFREY LOPINSKY, VICE PRESIDENT

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on June 24, 2019, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against E.S.A.D., Inc., t/a Just A Tavern, License Number R-AP-SS-2450, (Licensee).

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-471(d), alleging that during the period January 25 through April 23, 2019, Licensee, by its servants, agents or employees, failed to comply with the order of the Administrative Law Judge at Citation No. 18-0569C, mandating responsible alcohol management training.

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.

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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. At Adjudication 18-0569C, this Court ordered Licensee to pay a fine of \$1,400.00 and complete RAMP certification within 90 days, by November 27, 2018. Board records reveal that Licensee did not complete RAMP certification until July 8, 2019. The 253-day period from November 28, 2018 to July 8, 2019, during which Licensee was required to be RAMP certified, has resulted in the Bureau issuing two citations against Licensee: 19-0330 and this citation, 19-0953.
2. The Bureau opened an investigation of Licensee on December 28, 2018 and closed it on January 24, 2019. (Citation 19-0330, Bureau Prehearing Memorandum, p. 3.)
3. On March 8, 2019, the Bureau cited Licensee at 19-0330 for violating 47 P.S. §4-471(d) from November 28, 2018 through January 24, 2019, by failing to complete RAMP certification as ordered at Adjudication 18-0569C.
4. Forty-five days later, on April 23, the Bureau visited Licensee's premises again. Officers confirmed new employee orientation had not been completed for all employees within 30 days of hire. However, all employees had since received orientation. The premises failed to submit the affidavit request for RAMP certification to the Board.
5. On June 24, the Bureau issued a new citation at 19-0953, alleging a violation of 47 P.S. §4-471(d) from January 25 through April 23, 2019, for failure to complete RAMP certification as ordered at Adjudication 18-0569C.
6. Citation 19-0330 was assigned to me by the Chief Administrative Law Judge on July 9, 2019, the day after Licensee became RAMP certified, and 15 days after the Bureau issued Citation 19-0953.
7. On July 16, 2019, this court found that Licensee was not RAMP certified after November 27, 2018, until July 8, 2019 based on Board records and the case file. The court sustained citation 19-0330 concluding Licensee violated 47 P.S. §4-471(d), and imposed a fine, which Licensee paid on August 1.
8. Neither party objected to Adjudication 19-0330, filed a request for reconsideration, or filed an appeal.
9. Fifteen days later, on July 31, the Chief Administrative Law Judge assigned me Citation 19-0953 to adjudicate. The dates charged are wholly contained within the period of violation found and penalized at Adjudication 19-0330.

CONCLUSION OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since October 9, 1977, and has had five prior violations:

IN RE:

Citation No. 99-1941. Fine \$1,300.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
3. Sales between 2:00 a.m. and 7:00 a.m.

Citation No. 08-3039C. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a minor.

Citation No. 09-1769. Fine \$400.00.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years.
2. Failed to comply with the Order of the Administrative Law Judge mandating RAMP certification.

Citation No. 18-0569C. Fine \$1,400.00 and RAMP certification mandated.

1. Sales to a minor.  
March 12, 2018.

Citation No. 19-0330. Fine \$500.00.

1. Failed to comply with the Order of the Administrative Law Judge mandating RAMP certification.  
November 28, 2018 through January 24, 2019.

DISCUSSION:

The facts in this case obviously raise a res judicata issue: whether Licensee, having been found in violation of the identical charge for the dates alleged here, can be found in violation of that charge for the same dates again? The Pennsylvania Supreme Court has long recognized that under res judicata “a final judgment on the merits of an action precludes the parties ... from relitigating issues that were or could have been raised in that action....” In re Stevenson, 40 A.3d 1212, 1222 (Pa. 2010) (quoting Allen v. McCurry; 449 U.S. 90, 94 (1980)). (Emphasis added.)

The Pennsylvania Supreme Court also acknowledged that “in appropriate cases” res judicata may be raised by the court, Id. 40 A.3d 1212, 1223, but that courts have the discretion to

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find that the issue has been waived. Id. (citing Plant v. Spendthrift Farm, Inc., 514 U.S. 211, 231 (1995)).

The Bureau could have brought the dates charged here to the court's attention at 19-0330 by requesting to amend that citation.<sup>1</sup> Instead, the Bureau chose to issue a new citation against Licensee for the period after the dates charged at 19-0330.

This is not to suggest that the Bureau made the "wrong" choice. Obviously, the Bureau is free to decide how it may best fulfill its prosecutorial duty. However, the prosecutorial choice made in cases like this can give rise to a defense under res judicata. Because the information in the second charge was known while the original case was pending, it could have been litigated in the original case. In re Stevenson.

In this case I asked the parties whether this issue had already been decided at 19-0330.<sup>2</sup> Licensee confirmed it did not wish to raise the issue in this case. Therefore, I conclude that Licensee has waived the issue, and, accordingly, I will not address it further.

Because Licensee has waived its right to assert res judicata, I will not address the arguments raised by the Bureau in its emails and letter brief suggesting that dismissing the citation under res judicata would interfere with the Bureau's prosecutorial discretion. The Bureau has proved that Licensee violated §4-471(d) for a period of 88 days, and that it is a repeat violator of that section. This period is slightly above the average period charged for violations of §4-471(d) in 2019. Accordingly, I will impose a penalty consistent with the facts in this case.

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.

The Bureau requested that I consider a penalty of \$50.00. I rejected the recommendation because Licensee is a repeat violator of §4-471(d), and there is no mitigation in the record other than the waived res judicata argument. For the foregoing reasons, a fine of \$500.00 shall be imposed as an appropriate penalty in this case.

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<sup>1</sup> The Bureau recently did this in another case over which I presided: BLCE v. Argento Bros., Inc., Citation 19-1240 (ALJ 10/31/2019).

<sup>2</sup> For reasons that are unclear to me, two versions of Adjudication 19-0330 appear in our court records. While both sustain the citation, the one mailed to Licensee had a lower penalty (\$350.00) than the one mailed to the Bureau and kept in the master file (\$500.00). All references to Adjudication 19-0330 in this decision are to the version mailed to Licensee.

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ORDER:

THEREFORE, it is hereby ordered that E.S.A.D., Inc., License Number R-AP-SS-2450, pay a fine of \$500.00 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 30<sup>TH</sup> day of October, 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.

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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 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](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).

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