

Mailing Date: OCT 22 2019

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE Citation No.: 19-1173
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE Incident No.: PA 2019-712869
v.	:	
	:	
THE WHEEL BAR INC	:	PLCB LID No.: 34008
T/A THE WHEEL	:	
3058 WASHINGTON PK	:	PLCB License No.: R-AP-SS-9652
BRIDGEVILLE PA 15017-1404	:	
	:	
ALLEGHENY COUNTY	:	
	:	
	:	

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BLCE COUNSEL: NADIA L. VARGO, ESQ.
LICENSEE COUNSEL: GREGORY A. SZALLAR, ESQ.

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 26, 2019, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Wheel Bar, Inc., t/a The Wheel, License Number R-AP-SS-9652, (Licensee).

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-471(d), alleging that during the period May 19 through June 19, 2019, Licensee, by its servants, agents or employees, failed to comply with the order of the Administrative Law Judge at Citation No. 18-0756C, mandating continued compliance with the requirements of the Liquor Code pertaining to responsible alcohol management.

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.

THE WHEEL BAR INC
T/A THE WHEEL
IN RE CITATION NO. 19-1173

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. On February 19, 2019, at Adjudication No. 18-0756C, this Court ordered Licensee to pay a fine of \$1,700.00, serve a one-day suspension, and remain RAMP compliant for a period of one year from the mailing date of the order, through February 19, 2020. Board records reveal that Licensee's RAMP certification expired on May 18, 2019.
2. On June 11, 2019, a Liquor Enforcement Officer conducted a routine inspection of Licensee's premises and met with Board-approved manager Michelle Morris. Ms. Morris admitted that Licensee had not submitted the affidavit request for RAMP certification since RAMP certification expired on May 18, 2019. Ms. Morris' RAMP owner/manager training expired on May 8, 2019. Neither Ms. Morris nor any of the four sellers/servers had completed RAMP seller/server training within the past two years. Three of the four bartenders had never completed RAMP seller/server training. One bartender had not completed new employee orientation, and the remaining sellers/servers did not complete new employee orientation until June 7, 8 and 9, 2019. Ms. Morris stated that she was aware that not all requirements of RAMP had been maintained as required. Licensee displayed proper RAMP signage.
3. On June 19, 2019, the Officer reviewed the Board's RAMP training records and confirmed that Licensee was not yet RAMP-certified.
4. Board records establish that Licensee became RAMP certified on July 30, 2019, four days after the Bureau issued this citation. The Bureau expressly consented to this court referencing the Board's records indicating when Licensee became RAMP certified.¹
5. The parties held a phone conference to discuss whether, based on the Board records, there was reason to believe the violation charged here continued past the dates contained in the citation and extended until the date Licensee became RAMP certified.
6. The parties agreed there was reason to believe the violation continued past the dates charged based on the Board records. The parties specifically discussed the possible preclusive effect the current case could have on a future citation against Licensee under §471(d) for the period June 20, 2019, to July 30, 2019. However, when invited to consider filing a motion to amend the citation to include dates of violation established by Board records past those originally charged, a suggestion Licensee did not object to, the Bureau declined.

¹ I note that I am required to take administrative notice of Board records concerning RAMP certification by 40 Pa. Code §5.271(i).

THE WHEEL BAR INC
T/A THE WHEEL
IN RE CITATION NO. 19-1173

CONCLUSION OF LAW:

Based upon the record before me, Licensee operated from May 18, 2019, until July 30, 2019, a period of 73 days, without being RAMP certified as ordered at adjudication 18-0756C. Sustained.

PRIOR RECORD:

Licensee has been licensed since March 28, 1994, and has had seven prior violations:

IN RE:

Citation No. 95-1990. Fine \$500.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines).

Citation No. 98-1844. Fine \$1,000.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines).

Citation No. 00-0254. Fine \$1,000.00 and 2-days' suspension. Fine not paid and license suspended 1 additional day and thereafter until fine paid.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines and pools).
2. Permitted entertainment and/or dancing without an amusement permit.

Citation No. 15-0099C. Fine \$1,250.00 and RAMP certification mandated.

1. Sales to a minor.
December 15, 2014.

Citation No. 18-0338C. Fine \$1,400.00 and RAMP compliance mandated.

1. Sales to a minor.
January 17, 2018.

Citation No. 18-0756C. Fine \$1,700.00, a 1-day suspension and RAMP compliance mandated.

1. Sales to a minor.
May 15, 2018.

Citation No. 19-0643. Fine \$350.00 and a 1-day suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.
April 8, 2018.
2. Sales during a time when the license was suspended.
April 8, 2019.

THE WHEEL BAR INC
T/A THE WHEEL
IN RE CITATION NO. 19-1173

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 \$350.00 be imposed as an appropriate penalty in this case. Upon review of the factual summary presented by the Bureau, I am of the opinion that the recommendation is acceptable.

ORDER:

THEREFORE, it is hereby ordered that The Wheel Bar, Inc., t/a The Wheel, License Number R-AP-SS-9652, pay a fine of \$350.00 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 16TH day of October, 2019.



Richard O'Neill Earley, J.

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THE WHEEL BAR INC
T/A THE WHEEL
IN RE CITATION NO. 19-1173

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. 19-1173
The Wheel Bar, Inc.
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