

Mailing Date: AUG 4 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0418
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-387833
	:	
v.	:	
	:	LID - 50346
	:	
WELLINGTON C. BROWN, INC.	:	
926 LACKAWANNA TRAIL	:	
CLARKS SUMMIT, PA 18411-9278	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-13190	:	
	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: John J. Brier, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 4, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Wellington C. Brown, Inc. (Licensee), License Number R-AP-SS-13190.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)]. The charge is that on January 24, 2009, Licensee, by servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The second count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(1) of the Clean Indoor Air Act [35 P.S. §637.6(a)(1)]. The charge is that on January 24 and 27, 2009, Licensee, by servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act.

1. Commonwealth Exhibit No. C-2, N.T. 5.

An evidentiary hearing was conducted on July 2, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on January 21, 2009 and completed it on January 27, 2009. (N.T. 8)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 9, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)

Count Nos. 1 and 2:

3. A Bureau Enforcement Officer visited the premises on January 24, 2009 in an undercover capacity. He entered at 7:10 p.m. On the front door of the establishment, there was a sign posted indicating Licensee permitted smoking. Licensee was permitting smoking on the premises on that date. The Officer returned on January 27, 2009 and again noticed the same sign posted. (N.T. 9-12)

4. Licensee did not have a formal Exception issued by the Department of Health which would have permitted Licensee to allow smoking on the premises. (N.T. 13-14)

5. Licensee completed and posted an Application for an Exception on September 9, 2008, two days before the Clean Indoor Air Act was to go into effect. (N.T. 30-31)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Count Nos. 1 and 2 are **sustained** as charged.

DISCUSSION:

It was Licensee's position the document which accompanied Licensee's Application for Exception suggested that Licensee was authorized to permit smoking. Licensee did not have the documents available at the hearing. Bureau Counsel agreed there was such a document in existence.

Consequently, I kept the record open to allow Licensee to provide me the document. Licensee has done so. The document which accompanied the Application for Exception does not specifically state that an application filed prior to the effective date of the Act constitutes a default Exception.

The document does state that if one applies for an Exception on or after the effective date of the Act, the business must remain smoke free until it receives written approval for the Exception from the Department of Health.

By necessary implication, one may readily conclude that applications filed before the effective date of the Act automatically received approval until subsequently verified. For these reasons, the citation will be dismissed.

ORDER:

NOW THEREFORE, IT IS ORDERED THAT Citation No. 09-0418, issued against Wellington C. Brown, Inc., is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 24TH day of July, 2009.



Felix Thau, A.L.J.

pm

NOTICE: 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.