

Mailing Date: NOV 30 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1169
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-393380
v.	:	
	:	LID - 59104
1129 LUZERNE STREET, LLC	:	
T/A WEST SIDE BAR	:	
1129 LUZERNE ST.	:	
SCRANTON, PA 18504-2561	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-5910	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 22, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against 1129 Luzerne Street, LLC, t/a West Side Bar (Licensee), License Number R-AP-SS-EHF-5910.

The citation¹ 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 April 3, 2009, Licensee, by servants, agents or employees, permitted smoking in a public place where smoking is prohibited.

An evidentiary hearing was conducted on November 4, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have representation.

1. Commonwealth Exhibit No. C-2, N.T. 7.

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

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on September 18, 2009 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked: "Return to Sender Not Deliverable as Addressed Unable to Forward." (N.T. 5)
2. On September 18, 2009, by first-class mail, I issued a Pre-Hearing Order directing Licensee to submit its pre-hearing memorandum to this office. That Order reiterated the date, time and place of hearing. (N.T. 5)
3. The Bureau began its investigation on April 3, 2009 and completed it on April 14, 2009. (N.T. 6)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on May 18, 2009. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)
5. On April 3, 2009, several Bureau Enforcement Officers entered the premises at 10:20 p.m., as part of a general patrol of the area to inspect licensees for violations. Although Licensee did maintain a sign indicating smoking was permitted and customers were smoking on the premises, Licensee did not have an exemption.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since December 10, 2007, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

As Licensee did not appear and obey process, I impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 19TH day of November, 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.

Detach Here and Return Stub with Payment

The fine must be paid by cashier's check, certified check or money order. **Personal and business checks, are not acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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