

Mailing Date: DEC 09 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1231
LIQUOR CONTROL ENFORCEMENT	:	Citation No. 09-1393
	:	
	:	Incident No. W02-386952
v.	:	Incident No. W02-392537
	:	
	:	LID - 57271
	:	
DOCSTERS INN, INC.	:	
T/A DOCSTERS INN	:	As Consolidated Under
456 E. BROAD ST.	:	Citation No. 09-1231
HAZLETON, PA 18201-6757	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-4483	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** Craig A. Strong, Esquire  
**LICENSEE:** Mark Gerhard – Sole Corporate Officer – Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of two citations that were issued by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Docsters Inn, Inc., t/a Docsters Inn (Licensee), License Number R-AP-SS-4483.

**Citation No. 09-1231<sup>1</sup>**

This citation was issued on May 29, 2009 and contains three counts.

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1. Commonwealth Exhibit No. C-2, N.T. 24.

The first count charges Licensee with violations of Section 471(d) of the Liquor Code [47 P.S. §4-471(d)]. The charge is that from December 22, 2008 through April 17, 2009, Licensee failed to comply with the Order of the Administrative Law Judge at Citation No. 07-2935C mandating Responsible Alcohol Management Training.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding April 17, 2009.

The third 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 April 17, 2009, Licensee, by servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

**Citation No. 09-1393<sup>2</sup>**

This citation<sup>3</sup> was issued on June 17, 2009 and contains three counts.

The first count charges Licensee with violations of Section 491(6) of the Liquor Code [47 P.S. §4-491(6)]. The charge is that on April 17, May 17 and 20, 2009, Licensee's licensed premises was not accessible at all times to the use and accommodation of the general public.

The second 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 May 20, 2009, Licensee, by servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The third count charges Licensee with a violation 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 May 20, 2009, Licensee, by servants, agents or employes failed to post signage as required by the Clean Indoor Air Act.

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2. Commonwealth Exhibit No. C-2, N.T. 51.

3. The Bureau motioned to consolidate Citation No. 09-1393 under Citation No. 09-1231. I granted the Motion.

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 was represented by its Sole Corporate Officer. Mr. M. G.

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 6, 2009 and completed it on May 26, 2009.

2. The Bureau sent notices of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 28, 2009, as amended May 12, 2009, and on May 27, 2009. The notices alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 22)

**Citation No. 09-1231**

Count No. 1:

3. I take official notice that pursuant to Adjudication No. 07-2935C, Licensee was required to obtain R.A.M.P. Certification by December 21, 2008. As of the date of the hearing, Licensee had yet to comply with that Adjudication with respect to R.A.M.P.

4. On April 17, 2009, a Bureau Enforcement Officer attempted to visit the licensed premises. The Officer made five prior visits to the premises finding it to be locked and closed. (N.T. 30-32)

Count No. 2:

5. During the inspection, the Officer noted Licensee did not have a R.A.M.P. worksheet. (N.T. 37)

Count No. 3:

6. The Officer arrived on April 17, 2009 at 8:30 p.m., to conduct an administrative inspection. There were three patrons in the premises smoking cigarettes. (N.T. 34, Commonwealth Exhibit No. C-3)

**Citation No. 09-1393**

Count No. 1:

1. On April 17, 2009, two Bureau Enforcement Officers approached the front door of the premises. The front door was locked. The Officers knocked and were allowed to enter. (N.T. 53-55)

2. On May 16, 2009, a Bureau Enforcement Officer arrived at the premises at 10:10 p.m., finding the front door to be locked. The Officer maintained an outside surveillance of the premises. There were numerous patrons arriving in the area of the front door. The patrons made cell phone calls. The door of the premises opened and allowed those who previously made telephone calls to enter. (N.T. 57-58)

Count Nos. 2 and 3:

3. On May 20, 2009, a Bureau Enforcement Officer entered the premises at 4:45 p.m. to conduct an administrative inspection. The Officer met with Licensee's Sole Corporate Officer, Mr. G. and asked why he was operating the business with the appearance of it being closed, because the front door was locked and most neon signs turned off. (N.T. 59)

4. Mr. G. replied that he opens only for a few of his regular customers and attempts to keep "riffraff" out. (N.T. 60)

5. One patron was smoking a cigarette that day. Licensee further had no signs as required by the Clean Indoor Air Act. (N.T. 60)

CONCLUSIONS OF LAW:

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

**Citation No. 09-1231**

Count No. 1:

2. From December 22, 2008 through April 17, 2009, Licensee failed to comply with the Order of the Administrative Law Judge at Citation No. 07-2935C mandating Responsible Alcohol Management Training.

Count No. 2:

3. Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding April 17, 2009.

Count No. 3:

4. On April 17, 2009, Licensee, by servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

**Citation No. 09-1393**

Count No. 1:

5. On April 17, May 17 and 20, 2009, Licensee's licensed premises was not accessible at all times to the use and accommodation of the general public.

Count No. 2:

6. On May 20, 2009, Licensee, by servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

Count No. 3:

7. On May 20, 2009, Licensee, by servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act, as consolidated under Citation No. 09-1393.

DISCUSSION:

Licensee initially filed an Admission, Authorization and Waiver. Because there were substantial questions yet unanswered, I required a hearing. Licensee's Sole Corporate Officer, Mr. G. intended to submit the written Admission, Authorization and Waiver at the hearing. As he did so, Mr. G. remarked he had no knowledge of the charges to which he was admitting liability.<sup>4</sup>

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4. The matter than proceeded without the Admission, Authorization and Waiver.

I inquired as to why he would sign a document, which cedes significant rights, blindly. Mr. G.'s responses demonstrated a lack of sensitivity to his responsibilities as a licensee. Mr. G. is one who is essentially "winging it." Furthermore, he attempted to be untruthful by asserting the front door lock was not working properly, when without question, he allowed only specific clientele to enter. Finally, as of December 1, 2009, the date I prepared this Adjudication, Licensee has yet to comply with R.A.M.P. which is now three weeks short of one year.

PRIOR RECORD:

Licensee has been licensed since January 12, 2007, and has had four prior violations (Judge's Exhibit No. J-1, N.T. 25):

Adjudication No. 07-2935C. Fine \$1,250.00 and RAMP training mandated.

Sales to a minor.  
November 8, 2007.

Adjudication No. 08-0500. Fine \$350.00.

Possessed or operated gambling devices or permitted gambling on the licensed premises (sports pool).  
February 3, 2008.

Adjudication No. 08-0577X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages.  
December 21, 2007.

Adjudication No. 08-2796. Fine \$250.00.

Used loudspeakers or devices whereby music could be heard outside.  
September 26 and October 31, 2008.

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 Count Nos. 1, 2, 3 and 4 in this case, as consolidated.

I cannot countenance such blatant disregard, even if caused by negligence, of the law. Therefore, I impose:

**Citation No. 09-1231**

Count No. 1 - \$1,000.00 fine and 7 days suspension and continuing thereafter until Licensee obtains R.A.M.P. Certification.

Count No. 2 - \$100.00 fine.

Count No. 3 - \$125.00.00 fine.

**Citation No. 09-1393**

Count No. 1 - \$500.00 fine.

Count Nos. 2 and 3 – merged - \$125.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,850.00 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.

**Imposition of Suspension**

IT IS FURTHER ORDERED that the Restaurant liquor license (including all permits) of Docsters Inn, Inc., t/a Docsters Inn, License No. R-AP-SS-4483, be suspended for a period of seven days, **BEGINNING** at 7:00 a.m., on Monday, February 1, 2010, and continuing thereafter until Licensee has forwarded a Certification stating that it has obtain R.A.M.P. Certification. A copy of the Certification is to be returned to the Office of Administrative Law Judge, Pennsylvania Liquor Control Board, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania 17110-9661. A copy of all submissions are to be sent to Craig A. Strong, Assistant Counsel, Bureau of Liquor Control Enforcement, Pennsylvania State Police, 7448 Industrial Parkway, Macungie, Pennsylvania 18062.

Licensee is directed, on Monday, February 1, 2010, at 7:00 a.m., to place a 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 replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

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

**LICENSEE MAY NOT RESUME OPERATION OF THE LICENSED PREMISES UNTIL FURTHER ORDER BY THE ADMINISTRATIVE LAW JUDGE.**

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 2<sup>ND</sup> day of December, 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

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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 check payable to the Commonwealth of Pennsylvania and mail to:

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

Citation No. 09-1231  
DOCSTERS INN, INC.

**CERTIFICATION**

Citation No. 09-1231

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We, Docsters Inn, Inc., License No. R-AP-SS-4483, certify that we have obtained our R.A.M.P. Certification as of \_\_\_\_\_.  
(Date)

We, Docsters Inn, Inc., further acknowledge that the Bureau of Liquor Control Enforcement has been sent a copy of all documents as ordered.

We, the above licensee [or authorized officer's thereof], under penalty of law [18 Pa. C.S. §4904, relating to unsworn falsification to authorities] acknowledge that We are signing and executing this document as the authorized act and deed of the licensee. We certify that the foregoing is true and correct.

\_\_\_\_\_  
Print Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Original copy of Certification to be sent to: Office of Administrative Law Judge, Pennsylvania Liquor Control Board, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania 17110-9661.

A copy of Certification to be sent to: Craig A. Strong, Assistant Counsel, Bureau of Liquor Control Enforcement, Pennsylvania State Police, 7448 Industrial Parkway, Macungie, Pennsylvania 18062.