

Mailing Date: JAN 22 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1403
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-394594
v.	:	
	:	LID - 50682
TWO CITY BROTHERS, INC.	:	
T/A CHERRY'S	:	
368 HAZLE ST.	:	
WILKES-BARRE, PA 18701-4834	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-6281	:	
	:	

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 June 17, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Two City Brothers, Inc., t/a Cherry's (Licensee), License Number R-AP-6281.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Section 467 of the Liquor Code [47 P.S. §4-467]. The charge is that on May 6, 2009, Licensee, by servants, agents or employes, failed to constantly and conspicuously expose Temporary Authority Letter under a transparent substance on its licensed premises.

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

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 6, 2009, Licensee, by servants, agents or employees, 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 6, 2009, Licensee, by servants, agents or employees, failed to post signage as required by the Clean Indoor Air Act.

An evidentiary hearing was conducted on December 10, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation.

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 October 23, 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 unclaimed. (N.T. 4)
2. On October 26, 2009, I issued a Pre-Hearing Order by first-class mail directing Licensee to submit its pre-hearing memorandum to this Office and to Bureau Counsel. That Order reiterated the date, time and place of hearing. (N.T. 4)
3. The Bureau began its investigation on May 6, 2009 and completed it on May 14, 2009. (N.T. 6)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on May 27, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count No. 1:

5. On May 6, 2009, two Bureau Enforcement Officers entered the premises. Licensee was operating pursuant to temporary authority. That temporary authority was not posted under a transparent substance. (N.T. 8-9)

Count Nos. 2 and 3:

6. While on the licensed premises on May 6, 2009, the Officers observed patrons and employees were smoking. There was no sign indicating whether smoking was allowed or prohibited. (N.T. 10)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since January 13, 2003, and has had five prior violations (Commonwealth Exhibit No. C-3, N.T. 11):

Adjudication No. 04-0302. Fine \$400.00.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price. January 31 and February 1, 2004.
2. Furnished an unlimited or indefinite amount of free alcoholic beverages for a period of three hours on January 31 and February 1, 2004.
3. Your discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m. February 1, 2004.

Adjudication No. 05-0673X. Fine \$100.00.

Issued worthless checks in payment for malt or brewed beverages.
December 28, 2004.

Adjudication No. 05-2552X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages.
August 25 and September 16, 2005.

Adjudication No. 06-1183. Fine \$1,500.00 and 14 days suspension.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years.
April 19, 2006.
2. Refused an authorized employe of the enforcement bureau access to records covering the operation of the licensed business when the requests were made during business hours.
February 28, March 15 and 22, 2006.

Adjudication No. 07-3133. Fine \$600.00 and 1 day suspension with thereafter conditions.

1. Not a bona fide restaurant in that food items, eating utensils and dishes were insufficient.
November 20, 2007.
2. Failed to clean coils at least once every 7 days.
November 20, 2007.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years.
November 20, 2007.

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 and 3 in this case.

As Licensee has failed to appear or obey process, I impose:

- Count No. 1 – \$1,000.00 fine.
Count Nos. 2 and 3 – merged - \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,000.00 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 8TH day of January, 2010.



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