

Mailing Date: JAN 07 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1450
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-394151
v.	:	
	:	LID - 57618
SMITH FAMILY INVESTMENTS LTD	:	
326 BROWNSVILLE ROAD	:	
PITTSBURGH PA 15210-2249	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-8833	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Michael Nickles, Esquire
LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 24, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Smith Family Investments, Ltd., License Number R-8833 (hereinafter Licensee).

The citation contains two counts.

The first count charges Licensee with 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)], in that on May 7, 2009, Licensee, by its servants, agents or employees, permitted smoking in a public place where smoking is prohibited.

SMITH FAMILY INVESTMENTS, LTD.

Citation Number 09-1450

The second count charges Licensee with 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)], in that on May 7, 2009, Licensee, by its servants, agents or employees, failed to post signage as required by the Clean Indoor Air Act.

An administrative hearing was conducted on November 24, 2009, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on May 7, 2009, and completed its investigation on May 19, 2009. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated June 2, 2009, which was sent by certified mail and returned unclaimed. (Exhibit C-2)
3. The citation was issued on June 24, 2009, and was sent by certified mail and received by Licensee on June 30, 2009. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on October 9, 2009 by first class mail as well as certified mail.
5. The aforementioned certified mailing of the notice of hearing was returned unclaimed. The first class mailing was not returned.

COUNTS 1 AND 2

6. On May 7, 2009 at 9:00 p.m., Liquor Enforcement officers as part of a Nuisance Bar Task Force detail entered Licensee's premises and observed a female bartender rendering service of alcoholic beverages to approximately 25 patrons. Licensee's sole Corporate Officer and Manager Bradley M. Smith was also observed seated at the bar. (N.T. 9-10, 12-13)

7. During the course of this open inspection, an Enforcement officer observed ashtrays along with nine patrons smoking cigarettes at the bar and tables located on the premises. (N.T. 9-10, 12-13)

8. During the course of this inspection, the Enforcement officer noted that the Clean Indoor Air Act signage was not posted either inside or outside of the premises. (N.T. 9)

9. The detail of officers departed Licensee's premises at 10:34 p.m. (N.T. 10)

10. On May 19, 2009, the Enforcement officer contacted the Pennsylvania Department of Health and was advised that Licensee had not been granted a smoking exemption as of May 7, 2009. Subsequently, Licensee was granted a smoking exemption effective July 13, 2009. (Exhibit C-6)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On May 7, 2009, Licensee, by its servants, agents or employees, permitted smoking in a public place where smoking is prohibited, in violation of Section 471 of the Liquor Code, and Section 637.6(a)(2) of the Clean Indoor Air Act.

3. On May 7, 2009, Licensee, by its servants, agents or employees, failed to post signage as required by the Clean Indoor Air Act, in violation of Section 471 of the Liquor Code, and Section 637.6(a)(1) of the Clean Indoor Air Act.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged in Counts one and two of this citation by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PRIOR RECORD:

Licensee has been licensed since June 6, 2008, and has had one prior violation, to wit:

Citation No. 09-0681. Fine \$450.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
February 22, 2009.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
February 22, 2009.

SMITH FAMILY INVESTMENTS, LTD.

Citation Number 09-1450

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 types found in this case.

In consideration of the fact that Counts one and two of this citation arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

This court notes that Licensee has failed to submit a pre-hearing memorandum as directed by this court in a Notice dated August 25, 2009, and has failed to appear at the administrative hearing held in this matter. These circumstances demonstrate a clear lack of interest in this liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of \$600.00.

ORDER:

THEREFORE, it is hereby ordered that Smith Family Investments, Ltd., License Number R-8833, pay a fine of \$600.00 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.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 21ST day of January, 2009.



Roderick Frisk, J.

bg

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

SMITH FAMILY INVESTMENTS, LTD.

Citation Number 09-1450

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

Citation No. 09-1450

Smith Family Investments, Ltd.