

Mailing Date: NOV 03 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2568
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-401643
v.	:	
	:	LID - 60159
NEWPORT TAVERN, LLC	:	
T/A NEWPORT TAVERN	:	
726 N. 4 <sup>TH</sup> ST.	:	
NEWPORT, PA 17074-7214	:	
	:	
	:	
PERRY COUNTY	:	
LICENSE NO. R-AP-SS-19250	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
LICENSEE: SCOTT SPRUCEBANK, PRO SE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on November 5, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against NEWPORT TAVERN, LLC, License Number R-AP-SS-19250 (hereinafter "Licensee").

The citation 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 October 3 and 4, 2009, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The investigation which gave rise to the citation began on October 3, 2009 and was completed on October 19, 2009; and notice of the violation was sent to Licensee by Certified Mail on October 27, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 31, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. As of November 3, 2009, Licensee had not been granted an exemption by the Pennsylvania Department of Health pursuant to the Pennsylvania Clean Indoor Air Act to permit smoking in the establishment (N.T. Exhibit C-3).
2. On October 3, 2009 at 11:10 p.m. two officers of the Bureau entered the licensed premises (N.T. 9).
3. Upon entering the premises the officer observed that there was no signage with regard to smoking (N.T. 9-10).
4. While on the licensed premises, the officer observed patrons openly smoking. They also observed ashtrays across the bar and on the separate tables (N.T. 10).
5. The officers observed approximately 20-25 patrons who were smoking. The bartender was also smoking (N.T. 10).
6. Licensee's personnel took no actions to prohibit smoking on the licensed premises (N.T. 10).
7. The officers exited the licensed premises at 12:20 a.m. on October 4, 2009 (N.T. 10-11).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since June 26, 2008, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$100.00.

ORDER

THEREFORE, it is hereby ordered that Licensee NEWPORT TAVERN, LLC, pay a fine of \$100.00 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 pending final resolution of the penalty in this matter.

Dated this 18<sup>TH</sup> day of October, 2010.



Daniel T. Flaherty, Jr., J.

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**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 submit 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.** Make 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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Newport Tavern, LLC