

Mailing Date: FEB 03 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-3006
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-403006
v.	:	
	:	LID - 15054
BLONDIE'S INN, INC.	:	
49 W. HIGH ST.	:	
CARLISLE, PA 17013-2921	:	
	:	
	:	
	:	
CUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-11607	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL BALLARON
LICENSEE: NO APPEARANCE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 7, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against BLONDIE'S INN, INC., License Number R-AP-SS-11607 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)] in that on November 3, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The second 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 October 30 and November 3, 2009, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The third 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 October 30 and November 3, 2009, Licensee, by its servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act.

The investigation which gave rise to the citation began on October 27, 2009 and was completed on November 23, 2009; and notice of the violation was sent to Licensee by Certified Mail on December 21, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 8, 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:

COUNTS 1, 2 AND 3

1. On October 30, 2009 an officer of the Bureau entered the licensed premises at 10:50 p.m. Upon entry, he observed that there were two male bartenders rendering service to approximately 25 patrons (N.T. 9).

2. As the officer entered the licensed premises he noticed that there was no signage on the front entrance or anywhere within the bar room area of the licensed premises advising patrons whether or not smoking was permitted in the premises (N.T. 9).

3. The officer observed that there were numerous ashtrays distributed on the bar counter and on several tables in the bar room, and approximately 10 patrons were observed smoking during his time on the premises. In addition to the patrons, a bartender was observed smoking behind the bar counter (N.T. 9).

4. On November 3, 2009 at 1:10 a.m., the officer again entered the licensed premises. Again, he did not observe any signage on the front entrance or anywhere within the bar room area of the licensed premises advising patrons whether or not smoking was permitted on the premises (N.T. 9-10). Upon entry, the officer observed a male bartender heard to be called Kurt rendering service to approximately 10 patrons (N.T. 10).

5. The officer observed ashtrays distributed along the bar counter and on several tables. He observed at least three patrons smoking and utilizing the ashtrays (N.T. 10).

6. At 1:52 a.m., Kurt went around and started asking patrons what they wanted to order for last call. At 1:57 a.m., he locked the front entrance and started closing the blinds and conducting his cleaning duties (N.T. 10).

7. At 2:11 a.m., Kurt, the bartender moved to a stand up cooler. He removed a six pack of beer from the cooler, placed it in a bag and set it on the bar counter in front of a patron (N.T. 10).

8. The patron gave Kurt an unknown amount of currency which Kurt rang up on the cash register and gave the patron change (N.T. 11).

9. At 2:12 a.m. the officer asked Kurt if he could get a quart of Yuengling Lager for take out. Kurt said, "Sure, if it's to go." Kurt then removed a quart of Yuengling Lager from the cooler and put it on the bar counter in front of the officer. The officer gave him a \$10.00 bill to pay for it and Kurt gave him \$6.00 in change. The sale of \$4.00 for the quart of Yuengling Lager was rung up on the cash register at 2:20 a.m. (N.T. 11).

10. During the period from October 20, 2009 through November 10, 2009, Licensee had not been granted an exception by the Department of Health pursuant to the Pennsylvania Clean Indoor Air Act to permit smoking on the licensed premises (N.T. Exhibit C-5).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

DISCUSSION:

COUNT 1

The record clearly establishes that on November 3, 2009, a bartender on the licensed premises furnished alcoholic beverages to the Bureau officer and another patron after 2:00 a.m. Count 1 of the citation is, therefore, sustained.

COUNTS 2 AND 3

Criminal penalties are provided for violations of the Clean Indoor Air Act [35 P.S. §637.8(e)]. Therefore, violations of this Act constitute other sufficient cause as that term is used in Section 471 of the Liquor Code [47 P.S. §4-471] making a licensee who violates this Act liable for penalties provided by that Section as "other sufficient cause." (*Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988).

The Clean Indoor Air Act [35 P.S. §637.1 et seq] makes it unlawful for the proprietor of a business to allow anyone to smoke in a public area unless that individual has obtained an exception as provided in the Act from the Pennsylvania Department of Health. Further, this Act requires Licensee to post prominently smoking or non-smoking signs as appropriate in areas where smoking is either regulated or permitted under the Act.

The record in this case discloses that Licensee allowed smoking on the licensed premises on the dates set forth in Count 2 of the Citation. Further, the record also discloses that Licensee did not have the appropriate exception from the Department of Health to allow such smoking.

The record also discloses that Licensee had no signs indicating whether smoking was allowed or disallowed on the licensed premises.

Based on the foregoing, I conclude that Counts 2 and 3 of the citation are sustained.

PRIOR RECORD:

Licensee has been licensed since August 25, 1987, and has had seven prior violations:

Citation No. 94-2588. Fine \$50.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 95-2952. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 96-0640. 1 day suspension.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 2:30 a.m.

Citation No. 98-0285. 1 day suspension.

1. Operated the licensed establishment without a valid health permit or license.

Citation No. 98-1618. 2 days suspension.

1. Sold alcoholic beverages during a time when restaurant liquor license was suspended.

Citation No. 05-1466. Fine \$1,300.00. Fine not paid and license suspended 2 days and thereafter until fine paid.

1. Sales to a minor. March 5, 2005.

Citation No. 06-1406. Fine \$1,500.00 and 1 day suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. April 24 and 25, 2009.
2. Sales during a time when the license was suspended. April 24 and 25, 2009.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 1 of this case.

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 Counts 2 and 3 of this case.

Counts 2 and 3 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$1,250.00 fine
Counts 2 and 3 merged - \$200.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee BLONDIE'S INN, INC., pay a fine of \$1,450.00 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 25TH day of January, 2011.



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

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

Citation No. 09-3006
Blondie's Inn, Inc.