

charge is that Licensee, by your servants, agents, or employees, permitted smoking in a public place where smoking was prohibited, on November 21, 23 and 30, 2009.

The second count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(1) of the Clean Indoor Act [35 P.S. §637.6(a)(1)]. The charge is that Licensee, by your servants, agents, or employees, failed to post signage as required by the Clean Indoor Air Act, on November 21, 23 and 30, 2009.

I presided at an evidentiary hearing on October 5, 2011 at the Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on November 19, 2009 and completed it on December 15, 2009. (N.T. 21)

2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested on, January 14, 2010. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 18)

Count Nos. 1 and 2

3. The Pennsylvania Department of Health did not issue an exception allowing Licensee to permit smoking on the licensed premises during the dates charged. (Commonwealth Exhibit C-5)

4. On the dates charged, a Bureau Enforcement Officer conducted undercover visits to the premises. There were no signs outside or inside the premises indicating whether smoking was or was not permitted. Licensee allowed patrons to smoke. (N.T. 23-26)

CONCLUSIONS OF LAW:

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

2. Sustained as charged.

DISCUSSION:

Licensee argued there was an exemption in place to allow smoking on the premises. I kept the record open to allow Licensee to submit a certification from the Department of Health demonstrating that Licensee did have an exemption on the dates charged. Having received nothing from Licensee, I close the record.

ADJUDICATION HISTORY:

Licensee has been licensed since July 21, 2003, and has the following Adjudication history:

Docket No. 06-2284C. Fine \$1,250.00 and R.A.M.P. training mandated.
Sales to a minor.
August 11, 2006.

Docket No. 07-2988. Fine \$200.00
Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.
September 27, 2007.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

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 or more than \$1,000.00, or both for the violations found herein.

Discretionary Component(s)

I impose the following:

Count No. 1 - \$150.00 fine.

Count No. 2 - \$150.00 fine.

ORDER:

Fine Imposition

Licensee must pay a \$300.00 fine within 20 days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 10TH day of February, 2012.



Felix Thau, A.L.J.

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General Information

This Adjudication is a legal document. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.

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

Docket No. 10-0125
3745 Enterprises, Inc.