

Mailing Date: MAR 22 2011

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 10-2207
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-418631
 :
 v. :
 : LID - 13602
 :
 R J H INC :
2301 FRANKFORD AVE :
PHILADELPHIA PA 19125-2009 :
 :
PHILADELPHIA COUNTY :
LICENSE NO. R-AP-SS-OPS-9114 :

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 19, 2010. There are two counts in the citation.

The first count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(2) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(2), on September 10, 2010, by permitting smoking in a public place where smoking is prohibited.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(1) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(1), on September 10, 2010, by failing to post signage as required.

At the hearing scheduled for February 16, 2011, Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period August 3 through September 14, 2010, and sent it written notice of the results on September 24, 2010 (N.T. 10, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on October 19, 2010 (N.T. 10, Ex. B-2).

3. A Notice of Hearing was mailed to Licensee on December 30, 2010.

4. On September 10, 2010, liquor enforcement officers visited the licensed premises at 7:45 p.m. and saw several patrons smoking cigarettes, using ashtrays on the bar. No “no smoking” signs were posted. Licensee was not exempt from the Clean Indoor Air Worker Protection Law on this date (N.T. 6-10, Exhibit B-3).

CONCLUSIONS OF LAW:

Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, on September 10, 2010, by permitting smoking in a public place where smoking is prohibited.

Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, on September 10, 2010, by failing to post signage as required.

DISCUSSION:

The conclusions of law omit part of the statutory authority cited in the citation because the Clean Indoor Air Act does not apply to Philadelphia. *See* 35 P.S. §637.11. The basis for the charge in these counts is the authority of an administrative law judge to impose a penalty for “other sufficient cause.” *See* 47 P.S. §4-471(a).

Both the state’s Clean Indoor Air Act and the city’s Clean Indoor Air Worker Protection Law prohibit smoking in public places, absent an exemption. Both require the posting of “no smoking” signs. Licensee was not exempt from the Clean Indoor Air Worker Protection Law on the dates mentioned in the findings of fact, and could not be exempt from the Clean Indoor Air Act because that act did not apply.

PRIOR RECORD:

Licensee has been licensed since November 22, 1983, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 95-0914. \$1,000.00 fine.

1. Sales to minors.
2. Minors frequenting.

Citation No. 00-0601. \$500.00 fine.

1. Loudspeakers could be heard outside. February 4 and 25, 2000.

Citation No. 05-1053. \$300.00 fine.

1. Not a *bona fide* restaurant (insufficient food). April 27, 2005.

Citation No. 05-1856. \$100.00 fine.

1. Bad checks in payment for malt or brewed beverages. June 9, 2005.

Citation No. 10-0263. \$200.00 fine.

1. Operated without a valid health permit or license. November 30, 2009.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, R. J. H., Inc., License No. R-AP-SS-OPS-9114, shall pay a fine of two hundred dollars (\$200.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 15TH day of MARCH, 2011



David L. Shenkle, J.

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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

Citation No. 10-2207
R. J. H., Inc.