

Mailing Date: JUL 03 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 11-1867
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-428546
v.	:	
	:	
SCHOENFRANKS, INC.	:	PLCB LID No.: 58042
T/A JUST RUMORS	:	
HC 1, BOX 1187	:	
TAFTON, PA 18464-9702	:	PLCB License No.: R-AP-SS-17047

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on November 4, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Schoenfranks, Inc. (Licensee).

The first count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that Licensee, by your servants, agents, or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, on May 7, 2011.

The second count charges Licensee with a 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)]. The charge is that Licensee, by your servants, agents, or employees, smoked and/or permitted smoking in a public place where smoking was prohibited, on May 22, 2011.

I presided at an evidentiary hearing on April 17, 2012 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

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

FINDINGS OF FACT:

1. The Office of Administrative Law Judge mailed a notice of hearing on February 28, 2012, by certified mail, return receipt requested. The notice was returned unclaimed. (N.T. 4)

2. The Bureau began its investigation on March 30, 2011 and completed it on September 22, 2011. (N.T. 6)

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on October 11, 2011. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6-7)

Count No. 1

4. On May 7, 2011, at approximately 1:25 p.m., a Bureau Enforcement Officer arrived at the premises in an undercover capacity. At 2:00 a.m. there were approximately ten patrons remaining on the premises. The Officer departed at 2:18 a.m., there were five patrons remaining. The Officer conducted an outside surveillance. At 2:36 a.m. one of the patrons departed the premises. Two additional patrons departed at 2:40 a.m. Two minutes later, another patron departed the premises. At about 2:47 a.m. the remaining patron and the bartender exited the premises. (N.T. 8-9)

Count No. 2

5. On May 22, 2011, at approximately 10:40 a.m., a Bureau Enforcement Officer arrived at the premises. He was in an undercover capacity. After 10:00 a.m., some of the patrons began smoking cigarettes.

CONCLUSIONS OF LAW:

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

Count Nos. 1 and 2

2. The violations are sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 19, 2007, and has the following Adjudication history:

In Re Citation No.: 08-2723. Fine \$1,250.00 and RAMP training mandated.

Sales to a visibly intoxicated person on September 27, 2008.

In Re Citation No.: 09-2241C. Fine \$1,750.00.

Sales to a minor on August 21, 2009.

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 \$50.00, or more than \$1,000.00, or both for the violations found herein.

Discretionary Component(s)

As Licensee has failed to appear or obey process, I impose:

Count No. 1 - \$1,000.00 fine.

Count No. 2 - \$1,000.00 fine.

ORDER:

In Re Citation No.: 11-1867; Licensee, Schoenfranks, Inc.; PLCB LID No.: 58042;
PLCB License No.: R-AP-SS-17047

Imposition of Fine

Licensee must pay a \$2,000.00 fine within twenty 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

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 26TH day of June, 2012.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. 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.** 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