

Mailing Date: OCT 12 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 12-0407
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-441022
v.	:	
	:	
NAUGHTY NUNNY'S, INC.	:	PLCB LID No.: 52182
T/A NAUGHTY NUNNY'S	:	
209 LINDEN AVE.	:	
HANOVER, PA 17331	:	PLCB License No.: R-AP-17421

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on March 15, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Naughty Nunny's, Inc. (Licensee).

The first 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 is prohibited, on December 31, 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)(1) of the Clean Indoor Air 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 December 31, 2011.

I presided at an evidentiary hearing on August 29, 2012 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 Office of Administrative Law Judge sent a notice of hearing on July 12, 2012, by certified mail, return receipt requested. The notice was returned unclaimed. (N.T. 4)

2. The Bureau began its investigation on December 31, 2011 and completed it on February 7, 2012. (N.T. 7)

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on February 27, 2012. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 15)

Count No. 1

4. On the date charged, Licensee permitted smoking on the licensed premises. (N.T. 7)

Count No. 2

5. On the date charged, Licensee had signage stating that smoking was permitted. Licensee did not have an exception to permit smoking. (Commonwealth Exhibit No. C-5, N.T. 11)

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. I sustain the violations as charged.

PRIOR RECORD:

Licensee has been licensed since November 26, 2003, and has the following Adjudication history:

In Re Citation No.: 05-0263. Fine \$150.00.

Used loudspeakers or devices whereby the sound of music could be heard outside on December 3, 2004.

In Re Citation No.: 05-1645. Fine \$150.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

Used loudspeakers or devices whereby the sound of music could be heard outside on April 22, 23 and May 7, 2005.

In Re Citation No.: 08-0421. Fine \$350.00.

Used loudspeakers or devices whereby the sound of music could be heard outside on December 15, 2007 and January 13, 2008.

In Re Citation No.: 11-0957. Fine \$550.00.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited on March 12 and 27, 2011.
2. Used loudspeakers or devices whereby the sound of music could be heard outside on February 13, March 12 and 27, 2011.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [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)

Licensee deliberately misled the public by displaying a smoking permitted sign. Furthermore, as Licensee has failed to appear, obey process, or provide any mitigation, I impose:

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

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

ORDER:

In Re Citation No.: 12-0407; Licensee, Naughty Nunny's, Inc.; PLCB LID No.: 52182; PLCB License No.: R-AP-17421

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 4TH day of October, 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