

Mailing Date: OCT 12 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 12-0448
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-436518
	:	
	:	
v.	:	
	:	
	:	PLCB LID - 64430
HOTEL LOCUST, LLC	:	
315 LOCUST ST.	:	PLCB LICENSE NO. R-AP-SS-887
COLUMBIA, PA 17512-1120	:	

ADJUDICATION

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

BACKGROUND:

This proceeding arises out of a citation that was issued on March 22, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against HOTEL LOCUST, LLC, License Number R-AP-SS-887 (hereinafter "Licensee").

The citation contains two counts.

The first 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 September 26, November 10, 25 and 26, December 24 and 30, 2011 and January 24, 2012, Licensee, by its servants, agents or employees, smoked and/or permitted smoking in a public place where smoking is prohibited.

The second 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 November 10, 25 and 26, December 24 and 30, 2011 and January 24, 2012, Licensee, by its servants, agents or employees, failed to post signage as required by the Clean Indoor Air Act.

The investigation which gave rise to the citation began on September 19, 2011 and was completed on February 7, 2012; and notice of the violation was sent to Licensee by Certified Mail on February 21, 2012. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 29, 2012 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee at its address of record, 315 Locust Street, Columbia, PA 17512, by certified mail on July 12, 2012. The notice set forth the date and time of the hearing as August 29, 2012 at 3:30 p.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

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 AND 2

1. During the period from September 26, 2011 through January 24, 2012, Licensee did not have an exception under the Pennsylvania Clean Indoor Air Act (CIAA) to permit smoking on the licensed premises (N.T. Exhibit C-5).
2. On September 26, 2011, an officer of the Bureau entered the licensed premises at 7:50 p.m. Upon entry, the officer observed that the President of Licensee corporation, Pamela Lake was tending bar. She also observed that there were ashtrays distributed throughout the bar, and that patrons were smoking (N.T. 7).
3. On November 25, 2011 the officer made an undercover visit to the licensed premises, arriving at 9:05 p.m. Upon arrival, the officer did not observe any signs posted with respect to whether smoking was permitted or not permitted, on the door of the licensed premises. Upon entry into the licensed premises, the officer noted a sign into a dining area that read, "No Smoking Section." (N.T. 8)
4. While on the licensed premises on November 25, 2011 the officer observed that the bartender was smoking and that there were patrons smoking (N.T. 8-9).
5. On November 26, 2011, the officer again entered the licensed premises in an undercover capacity. The officer observed that there were no signs posted indicating whether smoking was permitted or not permitted except for a sign at the door to the dining area which said, "No Smoking Section." The officer observed that ashtrays were distributed throughout the bar area and the dining room area, and that numerous people were smoking on that visit (N.T. 9).

6. On December 24, 2011, an officer of the Bureau entered the licensed premises at 2:40 p.m. The officer observed that there were no signs posted indicating whether smoking was permitted or not permitted on the door to the licensed premises. Further, the officer observed that the only sign posted inside the licensed premises was a sign indicating that the dining room was a no smoking section (N.T. 10).

7. On December 24, 2011 an officer of the Bureau arrived at the licensed premises at 2:40 p.m. Upon entry the officer observed ashtrays distributed throughout the bar area. There was a female bartender and patrons were smoking inside the establishment. The officer observed no signs with respect to smoking except for the sign above the dining room door that said that the dining room was a no smoking section (N.T. 10-11).

8. On December 30, 2011 an officer of the Bureau entered the licensed premises at 8:35 p.m. The officer observed that there were no signs posted on the front door regarding whether smoking was allowed or not allowed within the licensed premises. Once inside the officer observed there were no signs posted inside the licensed premises with respect to whether smoking was allowed or not allowed except for the sign above the dining room door which indicated that the dining room was a no smoking area (N.T. 11-12).

9. While on the licensed premises on December 30, 2011 the officers observed numerous patrons smoking on the licensed premises.

10. On January 24, 2012 an officer of the Bureau entered the licensed premises at 2:00 p.m. to conduct a routine inspection. The officer observed there were no signs as to whether smoking was permitted or not on the outside of the licensed premises.

11. During the open inspection on January 24, 2012, the officer observed that there were ashtrays throughout the licensed premises and patrons were smoking during the inspection.

12. While conducting the inspection on January 24, 2012, the officer observed that there were no signs posted inside the licensed premises except for the sign over the dining room door that said, "No smoking section."

13. On November 10, 2011, a second officer of the Bureau entered the licensed premises where he observed a female bartender rendering service to seven patrons. As the officer entered he took notice that there was no signage regarding whether or not smoking was permitted on the licensed premises. Also in the bar room area there was no signage regarding whether or not patrons were permitted to smoke. The only signage he observed was a sign over the door which led into the dining room indicating that it was a no smoking section (N.T. 16-17).

14. During the course of the officer's visit on November 10, 2011 the officer observed plastic ashtrays distributed along the bar counter and on several tables. During the course of his visit, there were at least two patrons constantly smoking cigarettes. In addition, he observed the bartender smoking behind the bar counter (N.T. 17).

15. The officer saw no sign anywhere on the front entrance or the front façade of the premises which indicated whether smoking was permitted or not permitted on the licensed premises (N.T. 17-18).

16. On January 24, 2012 the second officer of the Bureau entered the licensed premises in an undercover capacity to assist the other officer during the routine inspection. During the time that he was on the licensed premises, the officer observed several patrons smoking on the licensed premises (N.T. 18-19).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since March 1, 2011, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Counts 1 and 2 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 a fine of \$200.00.

ORDER

THEREFORE, it is hereby ordered that Licensee HOTEL LOCUST, LLC, pay a fine of \$200.00 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.

Dated this 4TH day of October, 2012.



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.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

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

IN RE: CITATION NO. 12-0448
HOTEL LOCUST, LLC