

Mailing Date: APR 12 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 12-1232
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-444698
	:	
	:	
v.	:	
	:	
	:	PLCB LID - 52182
NAUGHTY NUNNY'S, INC.	:	
T/A NAUGHTY NUNNY'S	:	PLCB LICENSE NO. R-AP-17421
209 LINDEN AVE.	:	
HANOVER, PA 17331	:	

ADJUDICATION

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

BACKGROUND:

This proceeding arises out of a citation that was issued on August 16, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against NAUGHTY NUNNY'S, INC., License Number R-AP-17421 (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 April 7 and June 1, 2012, Licensee, by its servants, agents or employes, 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 April 7 and June 1, 2012, Licensee, by its servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act.

The investigation which gave rise to the citation began on March 11, 2012 and was completed on July 17, 2012; and notice of the violation was sent to Licensee by Certified Mail on August 1, 2012. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 5, 2013 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, 209 Linden Avenue, Hanover, PA 17331 by certified mail on January 11, 2011. The notice set forth the date and time of the hearing as March 5, 2013 at 11:00 a.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 April 6, 2012 to June 26, 2012 Licensee did not have an exception to the Pennsylvania Clean Indoor Air Act (CIAA) to permit smoking on the licensed premises (N.T. Exhibit C-5).

2. On April 7, 2012 at 10:45 p.m., an officer of the Bureau walked into the licensed premises where he observed corporate officer Lauren Baer tending bar. While he was there, he observed 30 patrons engaged in smoking. He also saw signage on the front door indicating that smoking was allowed on the premises (N.T. 8).

3. On June 1, 2012 at 8:30 p.m., the officer again entered the licensed premises where he saw corporate officer Baer present. The officer observed that Baer was smoking on the premises on that date. He also observed six other patrons smoking on the premises on that date. The officer observed that there was signage on the door of the licensed premises indicating that smoking was allowed (N.T. 9).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since November 26, 2003, and has had five prior violations:

IN RE:

Citation No. 05-0263. Fine \$150.00.

1. Loudspeakers.

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

1. Loudspeakers.

Citation No. 08-0421. Fine \$350.00.

1. Loudspeakers. December 15, 2007 and January 13, 2008.

Citation No. 11-0957. Fine \$550.00.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited. March 12 and 27, 2011.
2. Loudspeakers. February 13, March 12 and 27, 2011.

Citation No. 12-0407. Fine \$2,000.00. Fine not paid and license suspended 3 days and thereafter until fine paid. Fine not paid, license revoked.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited. December 31, 2011.
2. Failed to post signage as required by the Clean Indoor Air Act. December 31, 2011.

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 \$400.00.

ORDER

THEREFORE, it is hereby ordered that Licensee NAUGHTY NUNNY'S, INC., pay a fine of \$400.00 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 9TH day of April, 2013.



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. 12-1232
NAUGHTY NUNNY'S, INC.