

Mailing Date: MAR 13 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-1504
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-448061
	:	
LITTLE PORTUGAL CAFÉ INC.	:	
718 ADAMS AVE. &	:	PLCB LID - 54697
716-718 ADAMS AVE. LOWER LEVEL	:	
PHILADELPHIA PA 19124-2318	:	
	:	PLCB License No. R-AP-SS-2244
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 16, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Little Portugal Cafe, Inc., License Number R-AP-SS-2244 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 23, 2013, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation contains three counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. §4-471 and Section 10-602(3)(a.1)(iv) of the Clean Indoor Air Worker Protection Law, §10-602(3)(a.1)(iv), in that on August 24, 25 and 26, 2102, 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 10-602(5)(a.1) of the Clean Indoor Air Worker Protection Law, §10-602(5)(a.1), in that on August 24, 25 and 26, 2102, Licensee, by its servants, agents or employes, failed to post signage as required by the Clean Indoor air Worker Protection Law.

The third count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12), in that Licensee, by its servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding September 5, 2012.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on June 20, 2012 and ended on September 13, 2012. A notice of violation letter dated October 1, 2012 was sent to the licensed premises by certified mail, return receipt requested. On October 16, 2012, the certified mail indicates that on December 4, 2012 and January 29, 2013, a citation was mailed to the licensed premises by certified mail, return receipt requested. The mailing was also sent by first class mail to the Licensee on January 29, 2013. That mailing was returned to the sender unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on March 4, 2013 by certified mail, return receipt requested, and by first class mail. That certified mailing was returned unclaimed (N.T. 4, 12-15 and Exhibits B-1 and B-2).

2. Officer E.G. from the Bureau of Enforcement, at the time of the hearing, had been an Enforcement officer for approximately eight years. The officer was assigned to investigate the premises with regard to disorderly operations. On three separate dates in August, Officer D.D., another Bureau officer, had made investigative visits to the premises. On all three visits, the only violations he observed were patrons smoking from a hookah apparatus (N.T. 5-6).

3. The officer checked to determine if the premises, on August 27, 2012, had an exemption to the Clean Indoor Air Act (N.T. 6).

4. According to the records of the Board, the owner was Paul Martin, however, the license was being transferred and a new company was in the process of purchasing the premises (N.T. 6).

5. On September 3, 2012 at approximately 3:40 p.m., the officer conducted a routine inspection of the licensed premises. Upon entering, he saw a female bartender, who contacted the new owner, Mr. Aries. Mr. Aries arrived a short time later at the licensed premises (N.T. 6-7).

6. Mr. Aries was requested to present all the records. All records were accounted for except for beer and liquor receipts. The officer indicated that he would return on September 5, 2012 to review the missing records (N.T. 7).

7. While on the premises, the officer observed several different types of flavored tobacco used in a hookah apparatus. In the basement, the officer found several hookah apparatus' (N.T. 8).

8. The officer returned on September 5, 2012 at approximately 3:00 p.m. He received one receipt from B & O Beverage dated September 4, 2012. Mr. Aries indicated that that was the only record that he had maintained and that he was unaware that the regulations required him to maintain his beer and liquor receipts (N.T. 9).

9. The officer also asked Mr. Aries if he had a smoking exemption. Mr. Aries informed the officer that he was unaware that he needed a smoking exemption. The officer indicated that he had reviewed records from the Philadelphia Health Department and they did not indicate that he had any exemptions to the Clean Indoor Air Worker Protection Law. Mr. Aries informed the officer that he did allow patrons to smoke the flavored tobacco in the hookahs (N.T. 9-10).

10. No one was smoking at the time of the officer's visit (N.T. 11).

11. According to the records of the health department, the Licensee has no smoking exemption to the Clean Air Act (N.T. 15-16 and Exhibit B-3).

12. Officer D.D. is employed by the Bureau of Enforcement and has been so employed for over seven years. On August 24, 2012, he arrived at the premises at approximately 11:10 p.m. There were several security guards outside in the parking lot and at the door. The officer was patted down and then permitted inside the establishment. The officer observed patrons smoking from some hookahs. There were no signs for either permitting smoking or prohibiting smoking on the premises. The officer departed the premises on August 25, 2012 at approximately 12:20 a.m. While visiting, he did note patrons consuming alcoholic beverages (N.T. 18).

13. The officer returned to the premises on Sunday, August 26, 2012 at approximately 1:05 a.m. He entered the premises after being patted down by a security guard and paying a five dollar cover charge. He observed several patrons and bartenders smoking from hookahs. The officer requested information with regard to the hookahs and was told that it cost twenty dollars to rent one and that the premises would supply the tobacco (N.T. 19).

14. The officer attempted to ask him more questions with regard to the working of the hookah, however, the bartenders were busy. One of the bartenders did inform him that it was used with tobacco and water and anyone smoking one would absorb the vapors (N.T. 19-20).

15. The officer departed the premises at approximately 2:05 a.m. (N.T. 20).

16. During the officer's visit on August 26, 2012, he observed no signs prohibiting smoking or permitting smoking (N.T. 20).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On August 24, 25 and 26, 2102, Licensee, by its servants, agents or employes, smoked and/or permitted smoking in a public place where smoking is prohibited, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471 and Section 10-602(3)(a.1)(iv) of the Clean Indoor Air Worker Protection Law, §10-602(3)(a.1)(iv).

Count No. 2 - On August 24, 25 and 26, 2102, Licensee, by its servants, agents or employes, failed to post signage as required by the Clean Indoor air Worker Protection Law, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471 and Section 10-602(5)(a.1) of the Clean Indoor Air Worker Protection Law, §10-602(5)(a.1).

Count No. 3 - Licensee, by its servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding September 5, 2012, in violation of Section 493(12) of the Liquor Code, 47 P.S. §4-493(12).

PRIOR RECORD:

Licensee has been licensed since June 17, 2005, and has a record of prior violations as follows:

In Re:

Citation No. 06-1095. \$300.00 fine.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.
March 15, 2006.

Little Portugal Café, Inc.
In Re: Citation No. 12-1504

DISCUSSION:

On August 24, 2012 and during the early morning hours of August 25, 2012 and August 26, 2012, the Licensee permitted smoking on the licensed premises in violation of the Clean Indoor Air Worker Protection Law. Also, there was no signage posted prohibiting smoking as is required by the Act.

The Licensee was requested to produce receipts covering the operation of the business for a period of two years immediately preceding September 5, 2012, but was unable to produce more than one receipt. Licensee claimed to be unaware that the receipts were required to be kept on the premises for a period of two years and available for inspection.

Under the circumstances, moderate monetary penalties shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$100.00.
Count No. 2 - \$100.00.
Count No. 3 - \$200.00.

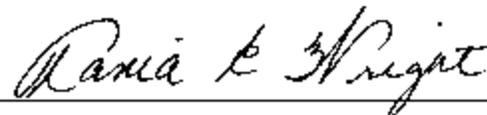
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Little Portugal Cafe, Inc., License Number R-AP-SS-2244, pay a fine of Four Hundred Dollars (\$400.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Jurisdiction of this matter is retained.

Dated this 25TH day of February, 2014.



Tania E. Wright, J.

Little Portugal Café, Inc.
In Re: Citation No. 12-1504

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE 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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

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Detach Here and Return Stub with Payment

The fine must be paid by a check drawn on the business or trust account of your attorney, who must be licensed in this Commonwealth, a Treasurer's Check, Cashier's Check or Money Order. **Personal and business checks are not acceptable unless they are certified by your bank.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation (please use the Return Stub when mailing payment or write your citation number on the check) to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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Little Portugal Café, Inc.