

Mailing Date: FEB 18 2014

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

PENNSYLVANIA STATE : In re Citation No. 12-1747  
POLICE, BUREAU OF :  
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W09-447302  
 :  
v. : PLCB LID No. 62389  
 :  
FREDDY'S PUB, LLC. : PLCB License No. R-AP-SS-EHF-2649  
14-16 MAUCH CHUNK ST. :  
TAMAQUA, PA 18252-1405 :

JUDGE SHENKLE  
BLCE COUNSEL: Roy Harkavy, Esq.  
LICENSEE: Larry Fredrick

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on December 24, 2012. There are three counts in the citation.

The first count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(1) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(1), on June 9, 22 and July 27, 2012, by failing to post signage as required.

The second count alleges that Licensee violated §493(34) of the Liquor Code, 47 P.S. §4-493(34), on June 22, 2012, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond licensee's property line.

The third count alleges that Licensee violated §§401(a) and 407(a) of the Liquor Code, 47 P.S. §§4-401(a) and 4-407(a), on June 22, 2012, by selling malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

A hearing was held on October 18, 2013, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On all dates relevant to this case License had an Exception, pursuant to the Pennsylvania Clean Indoor Air Act and granted by the Pennsylvania Department of Health, to permit smoking in its establishment (Exhibit C-3).

2. On June 9, 2012, a liquor enforcement officer visited the licensed premises and found no signs posted relating to smoking, either permitting or prohibiting it (N.T. 6-7).

3. On June 22, 2012, liquor enforcement officers arrived at the licensed premises at 12:45 a.m. and heard loud music emanating from it at a distance of 75 feet. They entered and found that the source of the music was a four-piece band called Freddy and Friends, amplified through three loudspeakers. They saw no signs posted relating to smoking, either permitting or prohibiting it. At 1:58 a.m. a customer purchased three six-packs of 12-ounce bottles of beer, which was entered in the cash register as a single transaction (N.T. 7-12, 16-18).

4. On July 27, 2012, liquor enforcement officers inspected the licensed premises. They saw no signs posted relating to smoking, either permitting or prohibiting it (N.T. 12-13).

5. On each of the dates alleged in the first count, June 9, 22 and July 27, 2012, and since 2010, Licensee had posted "SMOKING PERMITTED IN BAR" signs on each of its entrance doors. These signs also displayed the international symbol permitting smoking – a lit cigarette in a circle with no covering bar – and that no one under 21 years of age is permitted in the bar. These signs are not readily apparent outside the premises because Licensee installed storm doors at each entrance, so that a person entering will see the signs only briefly (N.T. 20-23, Exhibit L-1).

6. Licensee installed the storm doors and other sound insulation to keep music contained in the premises, but on June 22, 2012, the doors were open. Because of the size of Licensee's property, it is likely that the sound would not have crossed its property line if the doors had been closed (N.T. 23-28, Exhibits L-2 – 8).

7. On July 27, 2012, the "smoking permitted" sign had been taken off the back entrance, to allow the door to be repainted. The sign on the front entrance had not been removed (N.T. 38-39).

#### CONCLUSIONS OF LAW:

The evidence presented does not show that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(1) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(1), on June 9, 22 and July 27, 2012, by failing to post signage as required.

Licensee violated §493(34) of the Liquor Code, 47 P.S. §4-493(34), on June 22, 2012, by permitting the use on the inside of the licensed premises of a loudspeaker whereby music could be heard beyond licensee's property line.

Licensee violated §§401(a) and 407(a) of the Liquor Code, 47 P.S. §§4-401(a) and 4-407(a), on June 22, 2012, by selling malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

#### DISCUSSION:

The Clean Indoor Air Act provides in § 637.4, relating to Signage, that:

"Smoking" or "No Smoking" signs or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette in a circle with a bar across it, shall be prominently posted and properly

maintained where smoking is regulated by this act by the owner, operator, manager or other person having control of the area. A "Smoking Permitted" sign shall be prominently posted and maintained at every entrance to a public place where smoking is permitted under this act.

I find that Licensee substantially complied with the requirements of the Act, although there was a temporary period of noncompliance caused by the painting of the rear door of the premises. I find that a sign required by the Act is "prominently displayed" when it is posted on the exterior entrance(s) of a licensed premises.

It may be argued that Licensee should also have displayed "smoking permitted" signs on the interior of the premises, because if exterior signs were all that was required, only the last sentence of the provision quoted above would be necessary. However, the ultimate question in cases of this kind is whether there is "other sufficient cause" to impose a penalty, and I find there is not.

PRIOR RECORD:

Licensee has been licensed since January 12, 2010, and has had prior violations as follows:

In re Citation No. 10-1111. \$1,300.00 fine and R.A.M.P. – certification mandated.

1. Sales to a visibly intoxicated person. April 2, 2010.
2. Loudspeakers could be heard outside. April 4 and 15, 2010.

In re Citation No. 10-2241C. \$1,250.00 fine.

1. Sales to a minor. August 12, 2010.

In re Citation No. 11-0260. \$200.00 fine and 1 day suspension.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m. January 9, 2011.
2. Loudspeakers could be heard outside. January 9, 2011.

In re Citation No. 11-1293. \$350.00 fine.

1. Loudspeakers could be heard outside. May 27, June 24 and 25, 2011.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type. Penalties are assessed as follows:

- Count 1 – DISMISSED.
- Count 2 – a fine of \$400.00.
- Count 3 – a fine of \$100.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Freddy's Pub, LLC, License No. R-AP-SS-2649, shall pay a fine of five hundred dollars (\$500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 29<sup>TH</sup> day of JANUARY, 2014.



David L. Shenkle, J.

jb

**NOTICE: 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.**

**WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.**

**THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.**

**Detach Here and Return Stub with Payment; Note Citation Number on Check**

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The fine must be paid by cashier's check, money order, or a check drawn on the business or trust account of an attorney licensed in Pennsylvania. **Personal and business checks are not acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation, to:

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