

Mailing Date: SEP 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.: 13-0049
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W04-446970
	:	
DEEDA MARLO, INC.	:	
3390 W. CHESTNUT ST.	:	PLCB LID No.: 47547
BOX 637	:	
NORTH FRANKLIN TWP.	:	PLCB License No.: R-AP-SS-16900
WASHINGTON, PA 15301-8302	:	
	:	
	:	
	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Nadia L. Vargo, Esquire  
**LICENSEE COUNSEL:** Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on January 18, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Deeda Marlo, Inc., License Number R-AP-SS-16900 (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 June 2, 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 June 2, 2012, Licensee, by its servants, agents or employees, failed to post signage as required by the Clean Indoor Air Act.

An administrative hearing was conducted on July 16, 2013 at 2:45 p.m., at 2 Parkway Center, Pittsburgh, PA. The Bureau was represented by Nadia L. Vargo, Esquire. The hearing was held ex-parte.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on May 22, 2012, and completed its investigation on December 12, 2012. (N. T. 23 Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated January 4, 2013, which was sent by certified mail and was returned. (N. T. 12, 13, 14 Exhibits C-1, C-2)
3. This citation was issued on January 18, 2013, was sent by certified mail and was returned. (N. T. 16, 17 Exhibits C-5, C-6)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to the safekeeping and Licensee's home address on May 22, 2013 by first class mail as well as certified mail. (N.T. 7, 8 Official Notice)
5. The aforementioned mailing of the notice of hearing was sent by certified mail and was not returned. (N.T. 7, 8 Official Notice)

COUNTS ONE AND TWO

6. On June 2, 2012 at 1:05 a.m., a Liquor Enforcement Officer entered Licensee's premises in an undercover capacity and observed a male bartender who introduced himself as "Jerry" rendering service to approximately 15 patrons. (N.T. 9, 10)
7. During the course of this visit, the Enforcement Officer observed several patrons smoking cigarettes with several ashtrays located on the bar counter. (N.T. 10, 11)
8. The Enforcement Officer further noted that no Clean Indoor Air Act signage was posted anywhere inside or outside the premises. (N. T. 11)

9. The Pennsylvania Department of Health, Division of Tobacco Prevention and Control did not grant Licensee a smoking exception to the Clean Indoor Air Act on the date charged. (N. T. 21 Exhibit C-8)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

CONCLUSIONS OF LAW:

1. The notice requirements as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On June 2, 2012, Licensee, by its servants, agents or employees, 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 637.6(a)(2) of the Clean Indoor Air Act, [35 P.S. §637.6(a)(2)].
3. On June 2, 2012, Licensee, by its servants, agents or employees, failed to post signage as required by the Clean Indoor Air Act, in 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)].

PRIOR RECORD:

Licensee has been licensed since March 15, 2001, and has had two prior violations.

IN RE:

Citation No. 08-1867. Fine \$1,400.00 and R.A.M.P. training mandated.

1. Sales to a minor.  
July 11, 2008.
2. Minors frequenting.  
July 11, 2008.

Citation No. 10-0404. Fine \$600.00.

1. Illegal gambling (machines).

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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.

In consideration of the fact that counts one and two of this citation arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

Licensee's failure to submit a pre-hearing memorandum as well as its failure to appear at the Administrative hearing demonstrates a clear lack of interest in this liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of \$400.00.

ORDER:

THEREFORE, it is hereby ordered that Deeda Marlo, Inc., License Number R-AP-SS-16900, 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 to ensure compliance with this Order.

Dated this 29<sup>TH</sup> day of AUGUST, 2013.



Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 CHIEF COUNSEL'S OFFICE AT 717-783-9454.**

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Detach Here and Return Stub with Payment

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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).

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

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Deeda Marlo, Inc.