

Mailing Date: AUG 23 2013

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

PENNSYLVANIA STATE : In re Citation No. 13-0144  
POLICE, BUREAU OF :  
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W01-449775  
 :  
v. : PLCB LID No. 34002  
 :  
SUE-DEB, INC. : PLCB License No. R-AP-SS-19720  
1512 CHESTER PIKE :  
FOLCROFT, PA 19032-1006 :

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE: no appearance

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 12, 2013. There are three counts in the citation.

The first count alleges that Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, during the period February 29 through September 23, 2012, by operating the licensed premises without a valid health permit or license, which expired on February 28, 2012.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(2) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(2), on August 7, 17, 18, 23 and November 8, 2012, by smoking and/or permitting smoking in a public place where it is prohibited.

The third 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 August 7, 17, 18, 23 and November 8, 2012, by failing to post signage as required.

At the hearing scheduled for July 10, 2013, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period August 7 through December 31, 2012, and sent it written notice of the results on January 16, 2013 (N.T. 22-23, Exhibit B-1).

2. A copy of this citation was mailed to Licensee on February 12, 2013 (N.T. 24-25, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on May 17, 2013.
4. A liquor enforcement officer entered the licensed premises at 4:10 p.m. on August 7, 2012, and saw a bartender serving ten patrons. Two patrons were smoking cigarettes, using ash trays on the bar. There were no “no smoking” signs in the premises (N.T. 6-7).
5. The officer returned to the premises at 1:30 a.m. on August 17, 2012, and again saw patrons smoking, using ash trays on the bar, with no “no smoking” signs posted (N.T. 9-10).
6. The officer returned to the premises at 11:40 p.m. on August 17, 2012, and stayed until 12:25 a.m. the next day. About 15 of the 20 patrons present were smoking, using ash trays on the bar, with no “no smoking” signs posted (N.T. 10-11).
7. The officer returned to the premises at 8:35 p.m. on August 23, 2012. All 15 patrons were smoking, using ash trays on the bar, with no “no smoking” signs posted (N.T. 12-13).
8. The officer inspected the licensed premises on August 24, 2012, and saw that the health permit on display had expired on February 28, 2012. When informed of this, Licensee’s sole corporate officer immediately obtained a temporary permit, with the inspection needed for a permanent one scheduled for later that afternoon. Licensee passed the inspection, and a permanent health permit was issued (N.T. 14-19).
9. The officer returned to the premises at 2:50 p.m. on November 8, 2012. While waiting for Licensee’s corporate officer to arrive he saw a patron at the bar smoking a cigarette. There were ash trays on the bar. A “no smoking” sign was posted on the wall next to the kitchen. Licensee’s employee in charge admitted to the officer on that date that the premises had been open and selling alcoholic beverages every day between February 29 and August 23, 2012 (N.T. 20-21).
10. Licensee did not have an exception to the Clean Indoor Air Act on any of these dates (Exhibits B-3 and B-4).

#### CONCLUSIONS OF LAW:

Licensee violated §437 of the Liquor Code, 47 P.S. §4-437, and §5.41 of the Liquor Control Board Regulations, 40 Pa. Code §5.41, during the period February 29 through August 23, 2012, by operating the premises without a valid health permit, which expired on February 28, 2012.

Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(2) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(2), on August 7, 17, 18, 23, and November 8, 2012, by permitting smoking in a public place where it is prohibited.

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 August 7, 17, 18 and 23, 2012, by failing to post signage as required.

PRIOR RECORD:

Licensee has been licensed since March 22, 1994, and has had prior violations as follows:

In re Citation No. 99-1060. \$400.00 fine.

1. Gambling (machine).

In re Citation No. 06-0687. \$600.00 fine.

1. Gambling (sports bets, sports pools and cards).

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 – a fine of \$400.00.

Count 2 – a fine of \$300.00.

Count 3 – a fine of \$200.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Sue-Deb, Inc., License No. R-AP-SS-19720, shall pay a fine of nine hundred dollars (\$900.00) 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 15<sup>TH</sup> day of AUGUST, 2013.



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