

Mailing Date: AUG 06 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1759
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-463383
	:	
SUE-DEB INC.	:	
1512 CHESTER PIKE	:	PLCB LID - 34002
FOLCROFT PA 19032-1006	:	
	:	
	:	PLCB License No. R-AP-SS-19720
	:	
DELAWARE 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 September 3, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Sue-Deb, Inc., License Number R-AP-SS-19720 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, April 2, 2014, 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 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 26, 2013, Licensee, by its servants, agents or employes, smoked and/or permitted smoking in a public place where smoking is prohibited.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on June 26, 2013 and ended on July 26, 2013. A notice of violation letter dated July 23, 2013 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation dated September 3, 2013 was sent to the licensed premises by certified mail, return receipt requested. That mailing was also signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on February 24, 2014 by certified mail, return receipt requested, and by first class mail notifying Licensee of the April 2, 2014 hearing (N.T. 8-11 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement went to the licensed premises to conduct a routine inspection on Wednesday, June 26, 2013 at approximately 3:55 p.m. There were approximately seven people on the premises. The officer noted that there was a male tending bar. The officer identified himself as a Liquor Enforcement officer and began the inspection (N.T. 5-7).

3. The officer was introduced to an employee in charge, Michael Dolan. While the officer was conducting his inspection, he noted a strong odor of cigarette smoke emanating from the premises. He also observed patrons smoking cigarettes inside the premises in full view of the bartender. There were ashtrays on the bar (N.T. 6-7).

4. During the course of the inspection, the officer asked Mr. Dolan if the premises maintained a Clean Indoor Air Act Exemption. Mr. Dolan could not produce that exemption (N.T. 7).

5. When the officer completed the inspection and had left a copy of his report with the Licensee, he went to his office and researched the public website to determine if the Licensee had a Clean Indoor Air Act Exemption, but I could not locate one (N.T. 7).

6. On Monday, July 8, 2013, the officer requested certification from the Pennsylvania Department of Health. On Tuesday, July 16, 2013, the officer received certification from the Department of Health stating that they did not have an exemption to the Clean Indoor Air Act (N.T. 7 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On June 26, 2013, 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 637.6(a)(2) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(2).

PRIOR RECORD:

Licensee has been licensed since March 22, 1994, and has a record of prior violations as follows:

In Re:

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

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

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

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.

Citation No. 13-0144. \$900.00 fine and one day suspension.

1. Operated the licensed establishment without a valid health permit or license.  
February 29 through September 23, 2012.
2. Smoked and/or permitted smoking in a public place where smoking was prohibited.  
August 7, 17, 18, 23 and November 8, 2012.
3. Failed to post signage as required by the Clean Indoor Air Act.  
August 7, 17, 18, 23 and November 8, 2012.

DISCUSSION:

Licensee permitted smoking on the premises where smoking is prohibited. Under the circumstances, a monetary penalty shall be imposed. It is noted that Licensee had previous violations for allowing smoking on the premises. Future violations will result in much more severe penalties or a suspension of the license.

Sue-Deb, Inc.  
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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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Sue-Deb, Inc., License Number R-AP-SS-19720, pay a fine of Three Hundred Dollars (\$300.00) 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 22<sup>ND</sup> day of JULY, 2014.



Tania E. Wright, J.

**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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Sue-Deb, Inc.  
In Re: Citation No. 13-1759

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

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The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the business or trust account of an attorney, who must be licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless they are certified by your bank.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

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

**Credit/Debit Cards may be used:** visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us) and look under LEGAL/Office of ALJ for instructions.

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