

Mailing Date: SEP 19 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-2220
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-467505
	:	
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 November 5, 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 Tuesday, June 17, 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 September 11, 17 and October 4, 2013, Licensee, by its servants, agents or employees, 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 September 11, 2013 and ended on October 17, 2013. A notice of violation letter dated October 21, 2013 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on October 22, 2013 at the licensed premises. A citation dated November 5, 2013 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received at the licensed premises. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on March 19, 2014 by certified mail, return receipt requested, and by first class mail (N.T. 10-12 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises relative to gambling and smoking on the premises. The officer visited the premises on September 11, 2013 at approximately 4:45 p.m. The premises was open and operating. There were approximately fifteen patrons on the premises. A bartender was present (N.T. 5-7).

3. The officer observed that the bartender and numerous patrons were smoking cigarettes. The patrons were in the direct line of sight of the bartender, sitting around the bar. There were approximately twenty ashtrays on the countertop of the bar and were also visible to the bartender (N.T. 6-7).

4. The officer observed signage indicating “no smoking” on the premises as required by the Clean Indoor Air Act inside of the premises (N.T. 7).

5. The officer returned to the licensed premises on September 17, 2013 at approximately 2:00 p.m. The premises was open and operating. There were approximately five patrons inside and a bartender (N.T. 8).

6. The officer observed numerous patrons, as well as the bartender, smoking cigarettes. The officer saw approximately twenty ashtrays on the premises (N.T. 8).

7. The officer observed no smoking signs inside the premises (N.T. 9).

8. On October 4, 2013 at approximately 7:00 p.m., the officer again visited the licensed premises and noted approximately fifty patrons on the premises. There were two bartenders on duty. The officer observed numerous patrons smoking and ashtrays on the premises. The officer also noted that there were no smoking signs posted on the premises (N.T. 9-10).

9. An attestation from the Pennsylvania Department of Health indicates that the official records of the Division of Tobacco Prevention and Control indicates that on September 11, 2013, September 17, 2013 and October 4, 2013, the Licensee did not have an exception for the Pennsylvania Clean Indoor Air Act so as to permit smoking in the establishment (N.T. 10-13 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On September 11, 17 and October 4, 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.

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Citation No. 13-1759. \$300.00 fine.

1. Smoke and/or permitted smoking in a public place where smoking was prohibited.  
June 26, 2013.

DISCUSSION:

The Licensee permitted smoking in a public place where smoking is prohibited. In addition to allowing patrons to smoke, the bartender was also smoking on two occasions when the officer visited the premises. It is noted that the Licensee has two prior violations for allowing smoking on the premises. Under the circumstances, a \$600.00 monetary penalty shall be imposed. Future violations will result in much more severe penalties or a suspension of the license.

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.

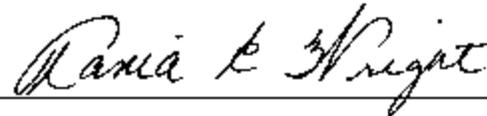
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Sue-Deb, Inc., License Number R-AP-SS-19720, pay a fine of Six Hundred Dollars (\$600.00) 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 10<sup>TH</sup> day of September, 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.

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**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 - 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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