

Mailing Date: AUG 29 2014

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-2548
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-465325
v.	:	
	:	
C. W. HILLIAR, INC.	:	PLCB LID No.: 35931
T/A THE BROKEN OAR TAVERN	:	
6369 RIVER DR.	:	
YORK, PA 17406-9762	:	PLCB License No.: R-AP-SS-20578

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on January 2, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against C. W. Hilliar, Inc. (Licensee).

The citation charges Licensee with a 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)]. The charge is that Licensee, by your servants, agents, or employees, smoked and/or permitted smoking in a public place where smoking is prohibited, on July 28, August 23 and September 19, 2013.

I presided at an evidentiary hearing on July 15, 2014 at 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Office of Administrative Law Judge sent a notice of hearing to Licensee at the address of record on May 28, 2014, by certified mail, return receipt requested and first class mail. The certified mail notice was returned unclaimed. The first class notice was not returned. (N.T. 4)

2. The Bureau began its investigation on July 28, 2013 and completed it on November 19, 2013. (N.T. 7)

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on November 27, 2013. The notice alleged the violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5-6)

4. On July 28, 2013, an undercover Bureau Enforcement Officer entered the premises noticing that twelve patrons were smoking. There were ashtrays on the bar. Licensee had no Clean Indoor Air Act exemption. Licensee maintained no signage within the premises indicating that smoking was prohibited. On the two remaining dates, Licensee permitted smoking and had no signage. (N.T. 6-14)

CONCLUSION(S) OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. I sustain the violations as charged.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since March 31, 1995, and has the following Adjudication history:

In Re Citation No.: 95-2339. Fine \$250.00.

Used loudspeakers or devices whereby music could be heard outside on July 10, 1995.

In Re Citation No.: 97-2465. Fine \$700.00.

1. Noisy and/or disorderly operation on 16 dates between May 11 and October 5, 1997.
2. Used loudspeakers or devices whereby music could be heard outside on 13 dates between June 14 and October 5, 1997.

In Re Citation No.: 98-1678. Fine \$1,000.00 and Amusement Permit suspended for 45 days.

1. Used loudspeakers or devices whereby music could be heard outside on 14 dates between March 7 and August 2, 1998.
2. Noisy and/or disorderly operation on 27 dates between March 7 and August 6, 1998.

In Re Citation No.: 98-2269. Fine \$1,000.00 and Amusement Permit suspended for 45 days.

1. Used loudspeakers or devices whereby music could be heard outside on 10 dates between September 12 and November 1, 1998.
2. Noisy and/or disorderly operation on 11 dates between September 12 and November 1, 1998.

In Re Citation No.: 99-0633. 1 day suspension.

Issued worthless checks in payment for malt or brewed beverages dated February 10, 1999.

In Re Citation No.: 99-1676. Fine \$200.00. ALJ reconsidered and modified fine to \$175.00.

Used loudspeakers or devices whereby music could be heard outside on May 7, 1999.

In Re Citation No.: 01-1938. 3 days suspension.

Sold alcoholic beverages after the restaurant liquor license expired on February 28, 2001 and had not been renewed and/or validated on 28 dates between May 11 and June 8, 2001 and on divers other occasions from March 1, 2001 through July 9, 2001.

In Re Citation No.: 03-0402X. Fine \$150.00.
Issued worthless checks in payment for malt or brewed beverages dated November 27, 2002.

In Re Citation No.: 03-2046. Fine \$250.00.
Failed to keep records on the licensed premises on August 6, 2003.

In Re Citation No.: 05-0085X. Fine \$150.00.
Issued worthless checks in payment for malt or brewed beverages dated November 24, 2004.

In Re Citation No.: 10-0908. Fine \$1,250.00.
Sales after the license expired and had not been renewed and/or validated on April 7, 2010.

In Re Citation No.: 10-1847. Fine \$450.00.
1. Sold, furnished or gave liquor for consumption off premises on July 2, 4 and 10, 2010.
2. Used loudspeakers or devices whereby the sound of music could be heard outside on July 4, 2010.

In Re Citation No.: 10-2789X. Fine \$200.00.
Issued worthless checks in payment for malt or brewed beverages dated November 3, 2010.

In Re Citation No.: 11-1795. Fine \$100.00.
Smoked and/or permitted smoking in a public place where smoking was prohibited on June 4, July 1, 4, 6 and 29, 2011.

In Re Citation No.: 12-0604 & 12-1027 (consolidated). Fine \$1,500.00.
Sales after the license expired and had not been renewed and/or validated during the period March 4, 2012 through May 4, 2012.

In Re Citation No.: 13-0853C. Fine \$1,250.00, 1 day suspension and mandatory RAMP training.
Sales to a minor on March 16, 2013.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [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 the violations found herein.

Discretionary Component(s)

Although Licensee was not charged with failing to have the appropriate “No Smoking” signage, I can and will consider that as an element in the fine.

This is Licensee’s second related violation. When considered in combination with Licensee’s lengthy violation history as well as Licensee’s failure to appear or obey process, I will not interpose any mitigating factors.

Accordingly, I impose a \$1,000.00 fine and seven days suspension.

ORDER:

Imposition of Fine

Licensee must pay a \$1,000.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication’s first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Suspension Length and Date(s)

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the license, for seven days, beginning Monday, October 6, 2014, 7:00 a.m., and ending Monday, October 13, 2014, 7:00 a.m.

Instructions to Post Notice of Suspension Placard

Licensee shall post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Monday, October 6, 2014, 7:00 a.m. The Suspension Placard may not be removed until Monday, October 13, 2014, 7:00 a.m.

Consequence of Failing to Comply With This Order

In addition to any other consequence at law, if Licensee does not comply with all conditions herein, the Bureau may issue an additional citation alleging Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 25 day of August, 2014.

A handwritten signature in cursive script, reading "Felix Thau", written over a horizontal line.

Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. If you have not already done so, it may be prudent for you to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.

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

The fine must be paid by cashier's check, money order, or an attorney's check who is licensed to practice law 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

Credit/debit cards may be used: visit www.lcb.state.pa.us scroll over LEGAL and then click on Office of ALJ for instructions..