

Mailing Date: SEP 09 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 14-0126
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-467282
	:	
HARRY O'S PUB INC.	:	
2153 S. HANCOCK ST.	:	PLCB LID - 37747
PHILADELPHIA PA 19148-3331	:	
	:	
	:	PLCB License No. R-AP-SS-16618
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 4, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Harry O's Pub, Inc., License Number R-AP-SS-16618 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, July 24, 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 10-602(3)(a.1)(iv) of the Clean Indoor Air Worker Protection Law, §10-602(3)(a.1)(iv), in that on August 12, 14 and November 13, 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 August 13, 2013 and ended on December 31, 2013. A notice of violation letter dated January 9, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on January 10, 2014. A citation dated February 4, 2014 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on February 6, 2014. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on June 6, 2014 by certified mail, return receipt requested, and by first class mail (N.T. 10-11 and Exhibits B-1 and B-2).

2. An Attestation from the city of Philadelphia Office of Environmental Engineering indicates that the Licensee did not possess a waiver of the Clean Indoor Air Worker Protection Law for the establishment on August 12, 2013 or August 14, 2013 (N.T. 12-14 and Exhibit B-3).

3. An Attestation from the city of Philadelphia Office of Environmental Engineering indicates that the Licensee did not possess a waiver of the Clean Indoor Air Worker Protection Law for the establishment on November 13, 2013 (N.T. 13-14 and Exhibit B-4).

4. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. In conjunction with that investigation, the officer went to the premises on Monday, August 12, 2013 at approximately 2:10 p.m. The officer entered the location and noted that there was a female bartender identifying herself as "Pat." There were no patrons inside the premises at the time the officer entered. Approximately twenty minutes later, at 2:30 p.m., the officer observed two patrons enter the premises smoking cigarettes. The bartender went behind the bar and retrieved a black ashtray and placed it in front of the patron (N.T. 5-6).

5. During the course of the officer's investigation, he engaged in conversation with the patron who identified himself as Dennis (N.T. 6).

6. The officer observed no other violations that afternoon and departed the premises at 3:10 p.m. (N.T. 6).

7. The officer returned to the premises on August 14, 2013 at approximately 2:25 p.m. The officer observed a female bartender rendering service to approximately ten patrons. The officer observed the same patron whom he had seen on an earlier visit, Dennis, inside the premises smoking with an ashtray in front of him. The officer observed no other violations that afternoon and departed the premises at 3:15 p.m. (N.T. 7).

8. The officer contacted the city of Philadelphia to determine whether the bar had an exemption to the Clean Indoor Air Worker Protection Law. That particular location did not have a smoking exemption (N.T. 7-8).

9. The officer made a visit to the premises on October 30, 2013, but the premises was closed (N.T. 8).

10. The officer then made an additional visit to the premises on Wednesday, November 15, 2013 at approximately 5:10 p.m. He observed the same bartender and the same patron he had identified, Dennis. Dennis was smoking a cigarette inside the premises (N.T. 8-9).

11. At the conclusion of the investigation, the officer requested certification from the city of Philadelphia with regard to the dates of his investigation and to inquire as to whether the premises had a smoking exemption (N.T. 8, 12-13 and Exhibits B-3 and B-4).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On August 12, 14 and November 13, 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 10-602(3)(a.1)(iv) of the Clean Indoor Air Worker Protection Law, §10-602(3)(a.1)(iv).

PRIOR RECORD:

Licensee has been licensed since October 9, 1996, and has a record of prior violations as follows:

In Re:

Citation No. 98-0883. \$1,000.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m.
April 11, 1998.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
April 11, 1998.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
April 11, 1998.

Citation No. 98-2122. \$300.00 fine and one day suspension with thereafter conditions. Suspension vacated.

1. Failed to keep records on the licensed premises.
July 15, 1998.
2. Not a bona fide restaurant in that chairs at tables were insufficient.
July 15, 1998.

Citation No. 00-1409. Two days suspension and thereafter until conditions corrected.

1. Not a bona fide restaurant in that seating was insufficient.
July 25, 2000.

Citation No. 03-0809. \$1,500.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m.
March 15, 2003.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
March 15, 2003.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
March 15, 2003.
4. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.
March 15, 2003.

Citation No. 05-0603. \$3,000.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
4. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m. when they did not possess an Extended Hours Food Permit.

Citation No. 05-0995. \$500.00 fine. Verification conditions corrected.

1. Not a bona fide restaurant in that food items were insufficient.
2. Failed to display documentary evidence that the premises meets all sanitary requirements for a public eating place.

Citation No. 06-2164. Seven days suspension and R.A.M.P. training mandated.

1. Sales to a visibly intoxicated person.
June 8, 2006.
2. Sales between 2:00 a.m. and 7:00 a.m.
July 21, 2006.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
July 21, 2006.
4. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
July 21, 2006.

Citation No. 08-2147. Three days suspension.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 18, 2008.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
May 18, 2008.

Citation No. 09-2978. Five days suspension.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
August 7 and November 20, 2009.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
August 7 and November 20, 2009.
3. Sales between 3:00 a.m. and 7:00 a.m. (Withdrawn by Bureau)
November 20, 2009.

DISCUSSION:

In three visits to the premises, the Bureau did not uncover any other violations, but did in each visit to the premises note violations of the Clean Indoor Air Worker Protection Law. Under the circumstances, a moderate monetary penalty shall be imposed.

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

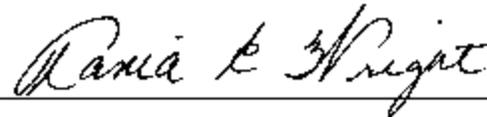
Harry O's Pub, Inc.
In Re: Citation No. 14-0126

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Harry O's Pub, Inc., License Number R-AP-SS-16618, pay a fine of Two Hundred Dollars (\$200.00) 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 5TH 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.

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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Harry O's Pub, Inc.
In Re: Citation No. 14-0126

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

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 and look under LEGAL/Office of ALJ for instructions.

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