

Mailing Date: DEC 12 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 14-0212
LIQUOR CONTROL ENFORCEMENT	:	BLCE INCIDENT NO. W03-471258
	:	
v.	:	
	:	
	:	PLCB LID - 48113
IK SECOND STREET	:	
ASSOCIATES, LLC	:	PLCB LICENSE NO. R-AP-SS-7975
236-238 N. 2 ND ST.	:	
HARRISBURG, PA 17101-1422	:	
	:	
DAUPHIN COUNTY	:	

ADJUDICATION

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: JAMES M. PETRASCU, ESQUIRE**

BACKGROUND:

This proceeding arises out of a citation that was issued on February 14, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against IK SECOND STREET ASSOCIATES, LLC, License Number R-AP-SS-7975 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)] in that on November 29 and 30, 2013, Licensee, by its servants, agents or employees, smoked and/or permitted smoking in a public place where smoking is prohibited.

The investigation which gave rise to the citation began on November 29, 2013 and was completed on December 28, 2013; and notice of the violation was sent to Licensee by Certified Mail on January 27, 2014. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 20, 2014 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On January 30, 2013, the Commonwealth of Pennsylvania, Department of Health issued an "Exception to Pennsylvania Clean Indoor Air Act (CIAA) to permit smoking" for the licensed premises. The expiration date for said exception was set for February 28, 2015 (N.T. Exhibit L-1).

2. On August 1, 2013, the Pennsylvania Department of Health issued a letter revoking Licensee's Exception to the Pennsylvania CIAA based upon the mistaken belief that the liquor license for the licensed premises had been revoked and/or suspended (N.T. L-2).

3. At no time during the years 2011, 2012 or 2013 was the liquor license for the licensed premises suspended or revoked for any reason (N.T. 33).

4. Mr. Ronald Kamionka, managing partner for Licensee partnership, immediately contacted the Department of Health and indicated that Licensee's liquor license had never been suspended or revoked. A representative of the Department of Health checked with the Liquor Control Board and found that the liquor license for the licensed premises in fact had neither been suspended nor revoked. It was indicated by the Department of Health that the easiest way for Licensee to remedy the matter was to fill out and redeliver a new application for the Exception. Mr. Kamionka filled out an Exception and delivered it to the Liquor Control Board on August 14, 2013 (N.T. 34).

5. On December 9, 2013, the Pennsylvania Department of Health delivered a new Exception to the Pennsylvania CIAA to permit smoking. The new Exception was to expire February 28, 2015 (N.T. 35).

6. On November 29, 2013, an officer of the Bureau entered the licensed premises at 10:22 p.m. Upon entry she found that the premises was open for business with about 60 or 70 patrons present N.T. 7-8).

7. Upon entry the officer observed ashtrays on the bar counters and on tables. She observed patrons smoking. She did not observe anyone telling patrons to put the cigarettes out or gathering up the ashtrays (N.T. 8-9).

8. On November 30, 2013, the officer again visited the licensed premises at 10:26 p.m. As she entered the licensed premises she saw ashtrays on the bar counter and there were ashtrays on the tables. She observed patrons smoking, and the aroma of cigarette smoke was in the air. No one was being discouraged from smoking (N.T. 9).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The record establishes that Licensee allowed smoking on the premises during a period when its Exception to the Clean Indoor Air Act had been revoked and had not yet been reissued. Unfortunately, even though the revocation was in error, the fact that Licensee allowed smoking to occur on the licensed premises constituted a violation.

PRIOR RECORD:

Licensee has been licensed since November 1, 2001, and has had four prior violations:

IN RE:

Citation No. 03-1213. Fine \$1,000.00.

1. Permitted entertainers to contact or associates with patrons.
2. Permitted lewd entertainment.

Citation No. 08-1623. Fine \$300.00.

1. Fortified, adulterated and/or contaminated liquor.
May 7, 2008.

Citation No. 11-1585. Fine \$600.00.

1. Fortified, adulterated and/or contaminated liquor.
July 2, 2011.

Citation No. 13-1483. Fine \$500.00.

1. Gambling (cards). June 10, 2013.

PENALTY:

Section 471 of the Liquor Code [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 violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$50.00.

ORDER

THEREFORE, it is hereby ordered that Licensee IK SECOND STREET ASSOCIATES, LLC, pay a fine of \$50.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Jurisdiction is retained.

Dated this 21ST day of November, 2014.



Daniel T. Flaherty, Jr., J.

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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.

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 CHIEF COUNSEL'S OFFICE AT 717-783-9454.

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

The fine must be paid by cashier's check, money order or a check drawn on the 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

IN RE: CITATION NO. 14-0212
IK SECOND STREET ASSOCIATES, LLC

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