

Mailing Date: FEB 25 2015

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 14-1057
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-477160
v.	:	
	:	
T-N-KEIFFER'S BRICKHOUSE, LP	:	PLCB LID No.: 62115
3095 TURKEY VALLEY RD.	:	
MT. PLEASANT MILLS, PA 17853	:	
	:	PLCB License No.: R-AP-SS-21470
JUNIATA COUNTY	:	

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 two counts, that was issued on June 5, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against T-N-Keiffer's Brickhouse, LP (Licensee).

The first count 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 April 8, 2014.

The second count charges Licensee with a violation of Section 5.23(c) of the Liquor Control Board Regulations [40 Pa. Code §5.23(c)]. The charge is that Licensee, by your servants, agents, or employees, failed to notify the Board within fifteen (15) days of a change of manager, during the period August 17, 2013 through April 8, 2014.

I presided at an evidentiary hearing on January 15, 2015 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 on December 2, 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.

2. The Bureau began its investigation on April 8, 2014 and completed it on April 28, 2014. (N.T. 11)

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on May 15, 2014. The notice alleged the violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

Count No. 1

4. On April 8, 2014, a Bureau Enforcement Officer entered the licensed premises to conduct an administrative inspection. The Officer observed patrons smoking in the licensed premises. Licensee did not have an exemption to allow smoking. (N.T. 11-12)

Count No. 2

5. Licensee installed a new Manager. During the period charged, Licensee failed to submit the required documents to the Pennsylvania Liquor Control Board to register the change. (N.T. 12-14)

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 September 15, 2009, and has the following Adjudication history:

In Re Citation No.: 11-1679. Fine \$2,000.00.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (Nascar pools) on June 27 and 28, 2011.
2. Smoked and/or permitted smoking in a public place where smoking was prohibited on June 27 and 28, 2011.

In Re Citation No.: 14-1543X. Fine \$150.00.

Issued worthless checks for payment of malt or brewed beverages dated April 21 and 28, 2014.

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)

I adopt the Bureau's recommended penalty as follows:

Count No. 1 - \$500.00 fine.

Count No. 2 - \$350.00 fine.

ORDER:

Imposition of Fine

Licensee must pay a \$850.00 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.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 18TH day of February, 2015.

A handwritten signature in cursive script that reads "Felix Thau". The signature is written in black ink and is positioned above 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..