

Mailing Date: OCT 28 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 15-0670
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-491486
	:	
CHRISTY'S BRICKS, INC.	:	
7217 FRANKFORD AVE.	:	PLCB LID - 65442
PHILADELPHIA, PA 19135-1010	:	
	:	
PHILADELPHIA COUNTY	:	PLCB License No. R-AP-SS-3708

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 April 21, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Christy's Bricks, Inc., License Number R-AP-SS-3708 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, September 15, 2015, 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 contains two counts.

The first count 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 March 24, 2015, Licensee, by its servants, agents or employes, smoked and/or permitted smoking in a public place where smoking is prohibited.

The second count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. §§4-471 and Section 10-602(5)(a.1) of the Clean Indoor Air Worker Protection Law, §10-602(5)(a.1), in that on March 24, 2015, Licensee, by its servants, agents or employes, failed to post signage as required by the Indoor Air Worker Protection Law.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on February 7, 2015 and ended on March 27, 2015. A notice of violation letter dated March 30, 2015 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on April 3, 2015. A citation dated April 21, 2015 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on April 24, 2015. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on July 29, 2015 by certified mail, return receipt requested, and by first class mail (N.T. 8-10 and Exhibits B-1 and B-2).

2. On Tuesday, March 24, 2015 at 9:30 p.m., an officer from the Bureau entered the licensed premises relative to a complaint for sales to minors. One female bartender was tending bar and rendering service of alcoholic beverages to three patrons. At approximately 9:45 p.m., a male patron entered the premises and took a seat at the bar. The patron lit a Marlboro cigarette and left the pack on the bar. He began smoking in full view of the female bartender. The officer did not observe any "No Smoking" signs visibly posted inside the premises. When he used the men's restroom, he observed cigarette butts in the toilet. The officer exited the licensed premises approximately five minutes later (N.T. 5-7)

3. A Certification/Attestation dated March 30, 2015, from the Philadelphia Department of Health states that the licensed premises did not possess a smoking exemption on March 24, 2015 (N.T. 8 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Christy's Bricks, Inc.
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Count No. 1 - On March 24, 2015, 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).

Count No. 2 - On March 24, 2015, Licensee, by its servants, agents or employes, failed to post signage as required by the Indoor Air Worker Protection Law, in violation of Section 471 of the Liquor Code, 47 P.S. §§4-471 and Section 10-602(5)(a.1) of the Clean Indoor Air Worker Protection Law, §10-602(5)(a.1).

PRIOR RECORD:

Licensee has been licensed since October 20, 2011, and has a record of prior violations as follows:

In Re:
Citation No. 14-0159. \$1,250.00 fine.
1. Sales to a minor.
December 19, 2013.

DISCUSSION:

The Bureau found no minors on the premises. However, the officer did see a patron smoking on the premises and noted that the premises had no signage relative to smoking or not smoking on the premises, as is required. Licensee has no exemption to the Clean Indoor Air Act and therefore smoking is prohibited in the premises. Licensee failed to appear at the scheduled hearing. It is our understanding that a transfer is now pending. 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$150.00.
Count No. 2 - \$150.00.

Accordingly, we issue the following:

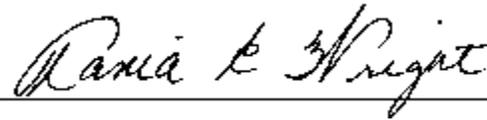
Christy's Bricks, Inc.
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ORDER

THEREFORE, it is hereby Ordered that Licensee, Christy's Bricks, Inc., License Number R-AP-SS-3708, pay a fine of Three Hundred Dollars (\$300.00) 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 26TH day of October, 2015.



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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Christy's Bricks, Inc.
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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 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

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