

Mailing Date: AUG 18 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 15-1209
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-494133
	:	
6119 CORP.	:	
6119 RIDGE AVE.	:	PLCB LID - 17459
PHILADELPHIA PA 19128-1604	:	
	:	
	:	PLCB License No. R-AP-SS-15612
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

**CHARLES MILLER
PRO SE**

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 14, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 6119 Corp., License Number R-AP-SS-15612 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, March 08, 2016, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

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 June 14, 2015, Licensee, by its servants, agents or employees, smoked and/or permitted smoking in a public place where smoking is prohibited.

FINDINGS OF FACT:

1. The Bureau conducted an investigation of the licensed premise relative to complaints of illegal gambling and smoking inside the licensed premises. As a result, an officer from the Bureau was assigned to investigate the licensed premises (N.T. 8-9).

2. On Sunday, June 14, 2015 at 7:28 p.m., the officer entered the licensed premises. One male bartender was tending bar. The officer requested a rum and coke to go and was denied take-out service. The officer then sat at the bar and ordered a Coors Light Beer. The officer observed the bartender smoking a cigarette, and they conversed about baseball. The officer observed ashtrays on the premises. There was no signage relative to smoking. At 7:45 p.m., the officer exited the licensed premises (N.T. 11-13).

3. On June 15, 2015, the officer ordered a Certification/Attestation from the Philadelphia Health Department stating that the licensed premises did not possess a smoking exemption on June 14, 2015 (N.T. 14-15 and Exhibit B-3).

CONCLUSIONS OF LAW:

On June 14, 2015, Licensee, by its servants, agents or employees, 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 August 8, 1953, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

In Re:

Citation No. 03-1629. \$350.00 fine and Verification conditions corrected.

1. Failed to maintain coil cleaning records.
2. Not a bona fide restaurant in that food items were insufficient.

Citation No. 05-0292. \$2,800.00 fine and Verification conditions corrected.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.
October 23, November 5, 13, 21 and December 15, 2004.
2. Sales between 2:00 a.m. and 7:00 a.m.
October 23, 2004.
3. Sales on Sunday between 2:00 a.m. and 11:00 .m.
4. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
October 23 and November 21, 2004.
5. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
October 23 and November 21, 2004.
6. Not a bona fide restaurant in that food items were insufficient.
December 15, 2004.

Citation No. 10-0287. \$1,200.00 fine.

1. Permitted smoking in a public place where smoking was prohibited.
November 16, December 6, 2009, January 27 and 28, 2010.
2. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
December 6, 2009.

Citation No. 10-1286. \$900.00 fine.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.
April 29 and May 5, 2010.
2. Permitted smoking in a public place where smoking was prohibited.
April 29 and May 5, 2010.
3. Failed to post signage as required by the Clean Indoor Air Act.
April 29 and May 5, 2010.

Citation No. 13-1128. \$150.00 fine and two days suspension.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited.
March 21 and April 13, 2013.
2. Sales between 2:00 a.m. and 7:00 a.m.
April 13, 2013.

6119 Corp.
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Citation No. 13-2498C. Two days suspension and RAMP
Certification mandated.

1. Sales to a minor.
October 23, 2013.

Citation No. 14-0356. \$250.00 fine.

1. Refilled liquor bottles.
January 27, 2014.

DISCUSSION:

Smoking is prohibited in public places, including licensed premises, unless the Licensee has a waiver allowing smoking. Here the bartender, an employee of the premises, was smoking. In addition, ashtrays were visible. The Licensee disputed the testimony of the officer, saying he had not seen the bartender smoke, there are no ashtrays and that there is signage on the premises. However, the Bureau officer was found to be credible. License has been cited for a similar offense on previous occasions.

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.

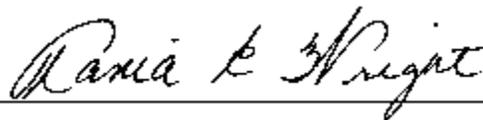
Accordingly, we issue the following:

ORDER

THEREFORE, it is hereby Ordered that Licensee, 6119 Corp., License Number R-AP-SS-15612, 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 9TH day of August, 2016.



Tania E. Wright, J.

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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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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

Credit/Debit Cards may be used: if you have already registered with PLCB+ you should be able to pay by Credit/Debit card; if you have not registered with PLCB+ you may obtain the information on how to register by sending an email message to:

RA-LBLICENSINGMOD@pa.gov

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