

Mailing Date: OCT 07 2016

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 15-2279
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-498689
v.	:	
	:	
D & M SHUMBRIS, INC.	:	PLCB LID No.: 36742
T/A THE SWIZZLE STICK	:	
434 MAIN ST.	:	
EDWARDSVILLE, PA 18704	:	PLCB License No.: R-AP-SS-8145
	:	
LUZERNE COUNTY	:	

ADJUDICATION

BEFORE: Ember S. Jandebour, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Pro Se

BACKGROUND:

This proceeding arises out of a citation, containing one count that was issued on January 8, 2016, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against D & M Shumbris, Inc. (Licensee).

The citation charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(1) of the Clean Indoor Air Act [35 P.S. §637.6(a)(1)]. The charge is that Licensee, by your servants, agents, or employees, failed to post signage as required by the Clean Indoor Air Act, on July 31, August 1, October 25 and December 5, 2015.

I presided at an evidentiary hearing on September 15, 2016 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on June 15, 2015 and completed it on December 5, 2015. (Commonwealth Exhibit No. C-1, N.T. 7)

2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on December 17, 2015. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)

3. On January 8, 2016, the Bureau of Liquor Control Enforcement cited D & M Shumbris, Inc. t/a The Swizzle Stick for failure to post “smoking” signage. (Commonwealth Exhibit No. C-2)

4. The Swizzle Stick has a front entrance and a side entrance. (N.T. 9, 15)

5. The Swizzle Stick had “smoking” signage at the side door. (N.T. 9, 15, 16, 17)

6. The Swizzle Stick had “smoking” signage posted at the side of the front entrance, but not on the door. (N.T. 15, 16, 17, 30)

CONCLUSION(S) OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The Bureau has failed to meet its burden of proof.

DISCUSSION:

Section 637.4, (of the Clean Indoor Air Act), entitled “Signage” states: A “Smoking Permitted” sign shall be prominently posted and maintained at every entrance to a public place where smoking is permitted under this act.” 35 P.S. §637.4.

Here, all testimony supports that there was proper signage at the Swizzle Stick's side entrance. There is conflicting testimony about signage at the front entrance. Officer Rhinehammer testified that "there was no "Smoking Permitted" sign on, near, or around the front entrance..." (N.T. 16)

Dennis Shumbris, one of the owners, testified that there was signage to the side of the front entrance.

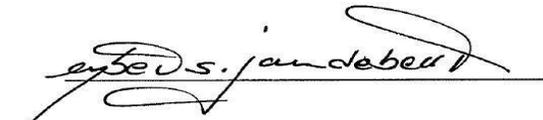
The regulation is silent regarding whether the sign needs to be on the door; the language simply states "at every entrance."

Based on the credible testimony of Dennis Shumbris, I find that the establishment had signage "at every entrance," and is not in violation of the regulation.

ORDER:

I dismiss the citation.

Dated this 5TH day of October, 2016.



Ember S. Jandebaur, J.

bc

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.

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.