

Mailing Date: OCT 07 2019

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 19-0521
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: PA 2018-1353859
v.	:	
	:	
511 BROAD, LLC	:	PLCB LID No.: 71290
511 W. BROAD ST.	:	
HAZLETON, PA 18201-6101	:	
	:	PLCB License No.: R-AP-SS-4261
LUZERNE COUNTY	:	

ADJUDICATION

BEFORE: Ember S. Jandebour, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE COUNSEL: William L. Byrne, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing five counts that was issued on April 8, 2019, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (BLCE) against 511 Broad, LLC (Licensee).

The first count charges Licensee with a violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that Licensee, by your servants, agents, or employees, operated your licensed establishment without a valid health permit or license, which expired on June 9, 2018, during the period June 10 through December 4, 2018.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by your servants, agents, or employees, refused an authorized employee of the Enforcement Bureau access to records covering the operation of the licensed business when the request was made during business hours, during the period December 1, 2018 through January 30, 2019.

The third count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by your servants, agents, or employees, failed to keep records on the licensed premises, on December 1, 2018; January 9 and 26, 2019.

The fourth 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 December 1, 14, 2018; and January 26, 2019.

The fifth count charges Licensee with a violation 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 December 1, 14, 2018; and January 26, 2019.

I presided at an evidentiary hearing on September 11, 2019 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

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

FINDINGS OF FACT

1. The BLCE opened an investigation of this Licensee on November 19, 2018 and completed it on February 22, 2019. (N.T. 7, Commonwealth Exhibit No. C-1)
2. The BLCE received a complaint from the Department of Agriculture that the Licensee was operating without an active health license. (N.T. 8, 12, Commonwealth Exhibit No. C-4)
3. On December 1, 14, 2018 and January 26, 2019 BLCE officers observed cigarette and hookah smoking going on in Licensee's premises. (N.T. 8-9, 14, 19-20, 25, 27, 30-31)
4. On December 1, 2018 several BLCE officers visited the Licensee's premises in plain clothes to conduct a routine investigation and review records. (N.T. 8-9)

5. The Licensee had a smoking exception permit displayed on the wall that belonged to the prior owner. Licensee did not possess its own smoking exception permit. (N.T. 9, 20, 27-28, Commonwealth Exhibit No. C-3)
6. On December 1, 2018, the Licensee failed to produce records. (N.T. 10)
7. On January 9, 2019, a BLCE officer requested records. The Licensee again failed to produce records. (N.T. 14)
8. On January 15, 2019 a BLCE officer again requested records. Licensee again failed to produce records. (N.T. 14)
9. On January 26, 2019 a BLCE officer visited Licensee's premises to review records. Licensee again failed to produce records. (N.T. 14)
10. No records were ever provided by the Licensee. (N.T. 15)

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.

DISCUSSION:

On July 24, 2019 the Office of the Administrative Law Judge sent a Citation Hearing Notice to Licensee's counsel Theodore J. Zeller, III, Esquire notifying him of the hearing scheduled for September 11, 2019 at 9:00 a.m. At 1:50 p.m. on September 10, 2019 an attorney Francis J. Hoegen faxed a request for a continuance. Apparently attorney Zeller resigned and attorney Hoegen was the replacement. No valid reason, indeed, no reason at all, was provided for these late actions. "No case will be continued without just cause..." 40 Pa. Code §15.54(a). §15.54(e) states: "[a] continuance may be approved if a written request... is received... at least 48 hours prior to the time fixed for hearing." 40 Pa. Code §15.54(e). The request for continuance was denied.

The hearing went forward as scheduled. Attorney William L. Byrne appeared on behalf of the Licensee. The Licensee chose not to appear at all.

Here, the Licensee permitted cigarette and hookah smoking on its licensed premises without a Clean Indoor Air Act exemption.

Section 637.3 of the Clean Indoor Air Act states:

Except as set forth under subsection (b), an individual may not engage in smoking in a public place. [].

35 P.S. §637.3(a).

Subsection (b) "Exceptions" states:

Subsection (a) shall not apply to any of the following:

(10) A drinking establishment.

Subsection (c) states:

(1) In order to be excepted under subsection (b) a drinking establishment, cigar bar or tobacco shop must submit a letter, accompanied by verifiable supporting documentation...

35 P.S. §637.3(c).

Section 637.6 entitled "Violations" states:

(a) It is a violation of this act to do any of the following:

- (1) Fail to post a sign as required by section 4.
- (2) Permit smoking in a public place where smoking is prohibited.
- (3) Smoke in a public place where smoking is prohibited.

Smoking was observed by the BLCE officers on three occasions. It is irrelevant what was being smoked as without an exception, no smoking is allowed. Period.

The BLCE met its burden of proof that Licensee smoked or permitted smoking and failed to post appropriate signage as required by law.

Regarding Licensee's health permit, it expired on June 9, 2018. From June 10, 2018 through December 4, 2018 Licensee operated without a valid health permit. The BLCE officers received a certified attestation of the expired health permit. (Commonwealth Exhibit No. C-4) The health permit was renewed on December 5, 2018 and expired on June 9, 2018.

The BLCE met its burden of proving that the Licensee operated without a health permit.

Regarding record keeping and producing records, the BLCE officers made numerous visits and attempts to secure records for a routine inspection. From December 1, 2018 through January 30, 2019 the Licensee failed to produce records. Additionally, on December 1, 2018 and January 9 and 26, 2019 Licensee failed to keep records on the licensed premises. Both of these actions violate the Liquor Code.

The BLCE met its burden of proof and appropriate penalties are assessed below.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since November 6, 2015, and has no prior Adjudications.

PENALTY ASSESSMENT CRITERIA:

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.

I impose:

Count No. 1 - \$150.00 fine.

Count No. 2 - \$500.00 fine.

Count No. 3 - \$500.00 fine.

Count No. 4 - \$250.00 fine.

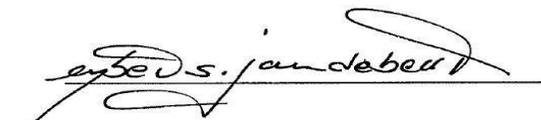
Count No. 5 - \$250.00 fine.

ORDER:

Licensee must pay a \$1,650.00 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.

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 30TH day of September, 2019.


Ember S. Jandebeur, J.

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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.

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: If you have registered with PLCB+ you may pay by Credit/Debit card at www.lcb.pa.gov by following the PLCB+ link. 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.