

Mailing Date: SEP 16 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1007
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-307622
v.	:	
	:	LID – 50009
TREMICH ENTERPRISES, INC.	:	
T/A THE ELIZABETHTOWN HOTEL	:	
26-32 S. MARKET ST.	:	
ELIZABETHTOWN, PA 17022-2307	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-SS-20049	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Trevor Orth
Vice President/Secretary and
Director and Stockholder

Michelle Orth
President/Treasurer/Director
and Stockholder and
Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 26, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Tremich Enterprises, Inc., t/a The Elizabethtown Hotel (Licensee), License Number R-AP-SS-20049.

This citation contains two counts.

The first count charges Licensee with violations of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on March 20, 26, April 6, 7 and 9, 2005, Licensee, by servants, agents or employes, used, or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The second count charges Licensee with a violation of Section 13.102(a)(4) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §13.102(a)(4)]. The charge is that on March 23, 2005, Licensee, by servants, agents or employes, permitted the price of alcoholic beverages to change within a designated discount pricing period.

An evidentiary hearing was conducted on August 9, 2005 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 17, 2005 and completed it on April 15, 2005. (N.T. 53)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on May 3, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1,, 05-1007, N.T. 51)

Count No. 1:

3. On March 20, 2005, a Bureau Enforcement Officer heard amplified music escaping the premises as far away as 65 feet. On March 26, 2005, a second Bureau Enforcement Officer heard amplified music escaping the premises at about 11:00 p.m. On April 6 and 7, 2005, representing one business day extending beyond midnight, a Bureau Enforcement Officer heard amplified music escaping the premises. On April 9, 2005, a Bureau Enforcement Officer heard amplified music escaping the premises. (N.T. 63-69)

Count No. 2:

4. On March 23, 2005, Licensee had a promotion called: "Beat The Clock Draft Special." The price of beer increased with time. (N.T. 56-62)

1. Commonwealth Exhibit No. C-2, 05-1007, N.T. 51.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since August 20, 2002, and has had three prior violations:

Adjudication No. 03-1123. Fine \$500.00.

1. Used loudspeakers or devices whereby music could be heard outside.
On 12 dates between March 15 and May 25, 2003.
2. Noisy and/or disorderly operation.
On 12 dates between March 15 and May 25, 2003.

Adjudication No. 03-1730. Fine \$250.00.

Used loudspeakers or devices whereby music could be heard outside.
August 9, 2003.

Adjudication No. 04-0778. Fine \$700.00.

1. Used loudspeakers or devices whereby music could be heard outside.
February 14, 20, 26, 27, 28, March 10, 12, 13, 17 and 20, 2004.
2. Noisy and/or disorderly operation.
February 14, 20, 26, 27, 28, March 10, 12, 13, 17 and 20, 2004.

PENALTY:

Section 471 of the Liquor Code [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 violations of the type found in Count Nos. 1 and 2 in this case.

I impose:

Count No. 1 – \$700.00 fine and 3 days suspension.
Count No. 2 – \$500.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,200.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, Pennsylvania 17110-9661

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant liquor license of Tremich Enterprises, Inc., t/a The Elizabethtown Hotel, License No. R-AP-SS-20049, be suspended for a period of three days, **BEGINNING** at 7:00 a.m., on Thursday, November 17, 2005, and **ENDING** at 7:00 a.m., on Sunday, November 20, 2005.

Licensee is directed, on Thursday, November 17, 2005, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Sunday, November 20, 2005, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 9th day of September, 2005.

Felix Thau, A.L.J.

pm

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.