

Mailing Date: AUG 25 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1044
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-303912
v.	:	
	:	LID - 51391
MARK A. DENSBERGER	:	
T/A DENS'S	:	
2 WATER STREET	:	
WASHINGTONVILLE, PA 17884	:	
	:	
	:	
MONTOUR COUNTY	:	
LICENSE NO. R-AP-SS-17357	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 2, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MARK A. DENSBERGER, License Number R-AP-SS-17357 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on March 19 and April 16, 2005, Licensee, by his servants, agents or employees, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The investigation which gave rise to the citation began on January 5, 2005 and was completed on April 16, 2005; and notice of the violation was sent to Licensee by Certified Mail on April 20, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 12, 2006 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. Licensee(s) did not appear at the hearing, nor did anyone appear on his behalf. A citation hearing notice was sent to Licensee(s) at his address of record, 2 Water Street, Washingtonville, PA 17884 by certified mail, return receipt requested and by first class mail on November 22, 2005. The notice set forth the date and time of the hearing as January 12, 2006 at 11:00 a.m., and the place of hearing as PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On March 18, 2005 at approximately midnight an officer of the Bureau entered the licensed premises (N.T. 9-10).

2. At approximately 12:10 a.m., now March 19, 2005, the officer, while on the licensed premises, observed several patrons in the back room begin to play a jukebox. The music of the jukebox was amplified through loudspeakers (N.T. 10).

3. The officer exited the licensed premises at 12:30 a.m. on March 19, 2005 and conducted a sound check. He could hear music emanating from the licensed premises at distances up to 210 feet (N.T. 10-11).

4. The officer returned to the licensed premises on April 16, 2005 at 1:00 a.m. He heard music emanating from the licensed premises prior to entering. He conducted a sound check and could hear music emanating from the licensed premises at distances up to 210 feet (N.T. 13).

5. The officer entered the licensed premises where he observed a DJ known as Jesse Hurricane Sound playing music for the entertainment of patrons. The music was amplified through loudspeakers (N.T. 14-15).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since July 8, 2003, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee MARK A. DENSBERGER, pay a fine of \$250.00 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 or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make check payable to the Commonwealth of Pennsylvania and mail to:

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

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 14th day of August, 2006.

Daniel T. Flaherty, Jr., J.

an

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.