

Mailing Date: DEC 15 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1080
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-309911
v.	:	
	:	LID - 45885
JONTRISH, INC.	:	
T/A TINK'S SPEARMINT CAFE	:	
519 LINDEN ST.	:	
SCRANTON, PA 18503-1605	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-10837	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Craig A. Strong, Esquire  
Pennsylvania State Police  
8320 Schantz Road, Second Floor  
Breinigsville, PA 18031

For Licensee  
Brian J. Cali, Esquire  
103 East Drinker Street  
Dunmore, Pa 18512

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on June 7, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Jontrish, Inc., t/a Tink's Spearmint Cafe (Licensee), License Number R-AP-10837.

This citation<sup>1</sup> contains three 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 April 28 and 29, 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)(3) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §13.102(a)(3)]. The charge is that on April 28, 2005, Licensee, by servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited draft beers and unlimited mixed drinks were served for the set price of \$6.00.

The third count charges Licensee with a violation of Section 13.102(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §13.102(a)]. The charge is that on April 28, 2005, Licensee, by servants, agents or employes, discounted the price of alcoholic beverages for a period or periods other than a consecutive period of time not to exceed two (2) hours in a business day.

An evidentiary hearing was conducted on November 2, 2005 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, 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 complied with the applicable, investigatory and notice requirements of the Liquor Code. (N.T. 7)

Count No. 1:

2. On April 28 and 29, 2005, representing one visit extending beyond midnight, a Bureau Enforcement Officer heard amplified music escaping the premises as far away as 200 feet. The music was being provided by a disc jockey using an electronic amplification system. (N.T. 8-10)

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1. Commonwealth Exhibit No. C-1.

Count Nos. 2 and 3:

3. On the evening of April 28, 2005, Licensee engaged in a promotion, which exceeded two hours, where patrons paid a \$6.00 cover charge and were allowed to purchase alcoholic beverages for a penny per drink. On some occasions, the bartenders did not collect any money for the drinks. (N.T. 11-12)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since August 9, 2000, and has had six prior violations:

Adjudication No. 00-1809. Fine \$1,000.00.

Minors frequenting.  
October 12, 2000.

Adjudication No. 01-1507. Fine \$100.00.

Engaged in unlawful discrimination in that you admitted female patrons free of charge while charging an admission fee to male patrons.  
July 6, 2001.

Adjudication No. 02-0211. Fine \$200.00.

Used loudspeakers or devices whereby music could be heard outside.  
November 9, 2001 and January 12, 2002.

Adjudication No. 02-0701. Fine \$1,250.00 and 1 day suspension.

1. Sales to a visibly intoxicated person.  
March 9, 2002.
2. Used loudspeakers or devices whereby music could be heard outside.  
March 9, 2002.

Adjudication No. 04-2102. Fine \$250.00.  
Served an unlimited amount of alcoholic beverages  
for a fixed price.  
November 5, 2004.

Adjudication No. 05-0431. Fine \$100.00.  
Operated the licensed establishment without a  
valid Health Permit or license.  
February 9, 2005.

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, 2 and 3 in this case.

I adopt the jointly recommended penalty as follows:

Count No. 1 – \$400.00 fine.  
Count Nos. 2 and 3 - merged – \$250.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$650.00 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

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 8<sup>th</sup> day of December, 2005.

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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.**