

Mailing Date: JAN 17 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1444
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-310179
v.	:	
	:	LID - 51765
WILD HORSES, INC.	:	
T/A JUDGES	:	
2934 BIRNEY AVE.	:	
SCRANTON, PA 18505-3132	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-6121	:	

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
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 18, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Wild Horses, Inc., t/a Judges (Licensee), License Number R-AP-6121.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §5512 and/or §5513] which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on May 13, 2005, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

The second 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 May 13, 14 and June 25, 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.

An evidentiary hearing was conducted on December 8, 2005 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear at the hearing.

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

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on October 21, 2005 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. On October 26, 2005, I issued a Pre-Hearing Order by first-class mail to Licensee at the licensed premises, directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing.
2. The Bureau began its investigation on April 22, 2005 and completed it on June 25, 2005. (N.T. 7)
3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 30, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

1. Commonwealth Exhibit No. C-2, N.T. 7.

Count No. 1:

4. While the Officer was at the premises in an undercover capacity on May 13, 2005, Licensee's Vice President/Secretary/Treasurer/Director, Patrick Grendel, offered the Officer a strip ticket. The price was \$2.00 with the winning prize of \$100.00. (N.T. 10, Commonwealth Exhibit No. C-3)

Count No. 2:

5. On May 13, 2005, at approximately 11:30 p.m., a Bureau Enforcement Officer was able to hear loud music emanating from the premises approximately 100 feet away. The Officer entered the premises at 11:40 p.m. and confirmed the source of the music he heard was a jukebox. (N.T. 8-10)

6. The Officer departed the premises at 12:15 a.m., May 14, 2005 and again heard amplified music escaping the premises. (N.T. 12)

7. On June 25, 2005, a Bureau Enforcement Officer again heard amplified music escaping the premises as far away as 100 feet. The Officer entered the premises and determined the music was being provided by a jukebox. (N.T. 14-15)

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 November 19, 2003, and has had one prior violation (Commonwealth Exhibit No. C-16, N.T. 16):

Adjudication No. 05-0345. Fine \$550.00.
Possessed or operated gambling devices or paraphernalia
or permitted gambling or lotteries, poolselling and/or
bookmaking on its licensed premises (machine).
February 1, 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 and 2 in this case.

Although this hearing was held ex-parte, I was advised it was Licensee's intention to submit an Admission, Waiver and Authorization. Therefore, I impose:

Count No. 1 - \$400.00 fine.
Count No. 2 - \$300.00 fine.

ORDER:

THEREFORE, it is hereby ordered that Licensee pay a fine of \$700.00 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 9th day of January, 2006.

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

WILD HORSES, INC.
CITATION NO. 05-1444

PAGE 5

**WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE
FILING FEE.**