

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. 05-1580
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-311734
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 August 11, 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 contains two counts.

The first count charges Licensee with 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] in that on May 27, 2005, Licensee, by his servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2005.

The second count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on April 29, 30, May 1, 7, 13, 14, 20 and 21, 2005, Licensee, by his servants, agents or employes, 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 May 23, 2005 and was completed on June 18, 2005; and notice of the violation was sent to Licensee by Certified Mail on June 24, 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:

COUNT 1

1. Licensee's eating and drinking license from the Bureau of Food Safety and Laboratory Services of the Pennsylvania Department of Agriculture expired on April 30, 2005, and, as of May 27, 2005, it had not been renewed (N.T. Exhibit C-5).
2. On May 27, 2005 an officer of the Bureau entered the licensed premises at 10:00 p.m. Upon entry he observed a male tending bar (N.T. 8).
3. The officer put money on the bar and ordered a bottle of Yuengling Lager beer. The bartender took \$2.25 for his drink and served him the beer (N.T. 8).

COUNT 2

4. On the dates listed in Count 2 of the Citation, a neighbor whose residence is approximately 75 feet from the licensed premises was disturbed in the evening by loud music emanating from the licensed premises. The music came from a jukebox and was amplified through loudspeakers (N.T. 13-23).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **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 as follows:

Count 1 - \$150.00 fine
Count 2 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee MARK A. DENSBERGER, pay a fine of \$400.00 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 11th 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.