

Mailing Date: AUG 21 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1645
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-309270
v.	:	
	:	LID - 52182
NAUGHTY NUNNY'S, INC.	:	
T/A NAUGHTY NUNNY'S	:	
209 LINDEN AVENUE	:	
HANOVER, PA 17331-4717	:	
	:	
	:	
ADAMS COUNTY	:	
LICENSE NO. R-AP-17421	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
Lauren Baer, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 18, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against NAUGHTY NUNNY'S, INC., License Number R-AP-17421 (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 April 22, 23 and May 7, 2005, Licensee, by its 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 April 12, 2005 and was completed on July 26, 2005; and notice of the violation was sent to Licensee by Certified Mail on August 3, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 25, 2006 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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 April 22, 2005, an officer of the Bureau pulled into the parking lot for the licensed premises. Prior to exiting her vehicle, the officer could detect the sound of music while still inside her vehicle with the windows rolled up (N.T. 13).
2. The officer began walking towards the licensed premises and noticed that the sound of music was getting louder and louder (N.T. 13-14).
3. The officer conducted a noise check and could hear the sound of music emanating from the licensed premises at distances up to 270 feet (N.T. 14-15).
4. The officer entered the licensed premises and determined that a DJ was providing music for the entertainment of patrons. The music was amplified through loudspeakers (N.T. 14).
5. The officer returned to the licensed premises on April 23, 2005 at 10:15 p.m. (N.T. 16).
6. The officer heard music emanating from the licensed premises prior to entry (N.T. 16).
7. Upon entry the officer determined that music was being provided by a DJ. The music was amplified through loudspeakers (N.T. 16).
8. The officer exited the licensed premises and could hear music emanating from the licensed premises at distances up to 220 feet (N.T. 16-17).
9. On May 6, 2005 at 11:55 p.m. the officer again entered the licensed premises. Upon entry she observed that music was being played by a disc jockey using the name No Nad. The music being played by the disc jockey was amplified through loudspeakers (N.T. 18).

10. The officer exited the licensed premises at 12:45 a.m. on May 7, 2005 and could hear music emanating from the licensed premises at distances up to 220 feet (N.T. 18-19).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since November 26, 2003, and has had one prior violation:

Citation No. 05-0263. Fine \$150.00.

1. Used loudspeakers or devices whereby music could be heard outside. December 3, 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 this case.

The party responsible for loud music emanating from the licensed premises has been barred from further activity on the licensed premises. This individual ignored requests by his spouse and business partner to turn the music down. Since he will have no more involvement in the operation of the licensed premises, I am inclined to act on the request for leniency by the Bureau of Enforcement and impose only a minimal penalty.

Under the circumstances of this case, the penalty imposed shall be a fine of \$150.00.

ORDER

THEREFORE, it is hereby ordered that Licensee NAUGHTY NUNNY'S, INC., pay a fine of \$150.00 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.

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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.