

Mailing Date: JUL 27 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0027
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-321726
v.	:	
	:	LID - 53602
HANNA & AXEL, INC.	:	
T/A THE DUTCHMAN	:	
338 S. FRONT ST.	:	
WRIGHTSVILLE, PA 17368-1614	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-PSS-19392	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Richard C. Young, III
Vice President and
Treasurer

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 19, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Hanna & Axel, Inc., t/a The Dutchman (Licensee), License Number R-AP-PSS-19392.

The citation¹ 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 November 12 and 26, 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 June 13, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its President/Treasurer, Mr. Richard Young.

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 began its investigation on November 7, 2005 and completed it on December 1, 2005. (N.T. 11)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on December 23, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 8)
3. On November 12, 2005, at approximately 5:00 p.m., a Bureau Enforcement Officer entered the premises in an undercover capacity. There was a rock band performing using an amplification system. The Officer departed at 6:20 p.m. At a distance of approximately 130 feet, the Officer heard amplified music escaping the premises. (N.T. 11-15)
4. The Officer returned on November 26, 2005, entering at approximately 11:10 p.m., in an undercover capacity. There was a rock band playing using an amplification system. The Officer departed at 11:45 p.m. He heard amplified music escaping the premises at approximately the same location of the earlier visit. (N.T. 15-16)

1. Commonwealth Exhibit No. B-3, N.T. 8.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since February 10, 2005, and has had one prior violation (Commonwealth Exhibit No. B-5, N.T. 17):

Adjudication Nos. 05-1996, 05-2123 and 05-2186 as Consolidated under Adjudication No. 05-1996.

1. Issued worthless checks in payment for malt or brewed beverages.
April 6, 27, May 4, 11, June 1, July 20, 2005.
2. Transported malt or brewed beverages without a license.
July 7, 15, 23, 29 and August 4, 2005.
3. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (tickets).
September 2 and 3, 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 this case.

I impose a \$300.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$300.00 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 18th day of July, 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 WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.