

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. 06-0145
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-320038
v.	:	
	:	LID - 35667
PIETRO SPORTS HAVEN, INC.	:	
T/A CUPELLI'S PUB & EATERY	:	
429 E. DRINKER ST.	:	
DUNMORE, PA 18512-2484	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-7513	:	

**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  
Marianne Stivala, Esquire  
103 East Drinker Street  
Dunmore, PA 18512

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on February 6, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Pietro Sports Haven, Inc., t/a Cupelli's Pub & Eatery (Licensee), License Number R-AP-SS-7513.

This citation<sup>1</sup> contains two counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on December 14, 2005, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, eighteen (18) years of age.

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 October 26 and November 9, 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 July 18, 2006 at the Scranton State Office Building, 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 began its investigation on October 11, 2005 and completed it on December 16, 2005. (N.T. 21)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on December 27, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 17)

Count No. 1:

3. On December 14, 2005, a detail of Enforcement Officers conducted an open inspection of the premises at approximately 11:45 p.m., at a time when there were patrons present and the business was open and in operation. The Officers found one minor, age eighteen, drinking alcoholic beverages. The drink was purchased for her by an unknown customer. (N.T. 30-43)

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1. Commonwealth Exhibit No. C-2, N.T. 19.

Count No. 2:

4. On October 26, 2005, at approximately 11:00 p.m., a Bureau Enforcement Officer heard amplified music escaping the premises in a parking lot which is part of Licensee's business operation. The Officer heard amplified music as far away as 120 feet. The amplified music was being provided by a disc jockey. (N.T. 25-29)

5. The Officer returned on November 9, 2005. The Officer heard amplified music escaping the premises as far away as 90 feet. (N.T. 30-31)

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 February 27, 1995, and has had twenty prior violations:

Adjudication No. 97-0073. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.  
December 20, 1996.

Adjudication No. 97-0700. Fine \$300.00.

Used loudspeakers or devices whereby music could be heard outside.  
February 15, 1997.

Adjudication No. 97-1370. Fine \$350.00.

Used loudspeakers or devices whereby music could be heard outside.  
May 30 and June 14, 1997.

Adjudication No. 97-2057. Fine \$550.00.

1. Used loudspeakers or devices whereby music could be heard outside.  
July 19 and August 16, 1997.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
September 6, 1997.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.  
September 6, 1997.

Adjudication No. 98-0121. Fine \$350.00.  
Used loudspeakers or devices whereby music could be heard outside.  
January 3, 1998.

Adjudication No. 98- 0283. Fine \$300.00.  
Used loudspeakers or devices whereby music could be heard outside.  
January 23, 1998.

Adjudication No 98-0579. Fine \$300.00.  
Used loudspeakers or devices whereby music could be heard outside.  
February 20, 1998.

Adjudication No. 98-1126. Fine \$500.00 and 1 day suspension.  
Used loudspeakers or devices whereby music could be heard outside.  
April 17 and May 15, 1998.

Adjudication No. 98-1800. Fine \$650.00 and 1 day suspension.  
Used loudspeakers or devices whereby music could be heard outside.  
August 22, 1998.

Adjudication No. 99-1314. Fine \$3,050.00 and 3 days suspension.

1. Used loudspeakers or devices whereby music could be heard outside.  
April 4, 11, 19, May 8 and June 15, 1999.
2. Sales to minors.  
May 8 and 9, 1999.
3. Sold alcoholic beverages during a time when Restaurant Liquor License was suspended.  
June 15, 1999.
4. Permitted entertainment when your license was suspended by Order of an Administrative Law Judge.  
June 15, 1999.
5. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.  
June 15, 1999.
6. Permitted lewd, immoral or improper entertainment.  
June 15, 1999.
7. Permitted entertainers to contact or associate with patrons for a lewd, immoral, improper or unlawful purpose.  
June 15, 1999.

Adjudication No. 99-1965. Fine \$800.00 and 3 days suspension.  
Used loudspeakers or devices whereby music could be heard outside.  
November 6, 1999.

Adjudication No. 00-0604. Fine \$250.00.  
Failed to return your Restaurant Liquor License and Wholesale  
Liquor Purchase Permit Card to the Board after your licensed  
establishment had not been in operation for a period of 15  
consecutive days.  
Between January 10 and February 10, 2001.

Adjudication No. 02-2060. Fine \$750.00.  
Used loudspeakers or devices whereby music could be  
heard outside.  
October 30, 2002.

Adjudication No. 03-0562. Fine \$250.00.  
Used loudspeakers or devices whereby music could be  
heard outside.  
January 24, 2003.

Adjudication No. 04-0754. Fine \$1,800.00 and 3 days suspension.

1. Sales to minors.  
March 20 and April 1, 2004.
2. Minors frequenting.  
March 20 and April 1, 2004.

Adjudication No. 05-0528. Fine \$2,000.00 and 2 days suspension.

1. Sales to minors.  
February 17, 2005.
2. Minors frequenting.  
February 17, 2005.

Adjudication No. 05-1012. Fine \$750.00.  
Used loudspeakers or devices whereby music could be  
heard outside.  
April 14, 2005.

Adjudication No. 05-1027. Fine \$150.00.  
Issued worthless checks in payment for malt  
or brewed beverages.  
April 1, 2005.

Adjudication No. 05-2031. Fine \$850.00.  
Used loudspeakers or devices whereby music  
could be heard outside.  
July 28, September 9 and 10, 2005.

Adjudication No. 05-2191. 2 days suspension.  
Notices on your licensed premises indicated that  
your licensed establishment was closed for a  
reason other than the suspension of the license.  
September 22 and 23, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 1 and 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 No. 2 in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudications (04-0754 AND 05-0528), in combination with the charge in Count No. 1 in this citation, requires that license revocation or suspension must be included as part of the penalty.

I adopt the jointly recommended penalty as follows:

Count No. 1 – \$2,500.00 fine and 3 days suspension.  
Count No. 2 – \$900.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$3,400.00 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, 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

### **Imposition of Suspension**

IT IS FURTHER ORDERED that the Restaurant liquor license of Pietro Sports Haven, Inc., t/a Cupelli's Pub & Eatery, License No. R-AP-SS-7513, be suspended for a period of three days, **BEGINNING** at 7:00 a.m., on Monday, October 16, 2006, and **ENDING** at 7:00 a.m., on Thursday, October 19, 2006.

Licensee is directed, on Monday, October 16, 2006, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Thursday, October 19, 2006, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 14<sup>th</sup> day of August, 2006.

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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.**