

Mailing Date: NOV 06 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0940
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-326134
v.	:	
	:	LID - 31872
WICONISCO FIRE ENGINE	:	
CO. NO. 1, INC.	:	
387 ARCH STREET	:	
P.O. BOX 246	:	
WICONISCO, PA 17097-0246	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. CC-6245	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Frank C. Sluzis, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 27, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against WICONISCO FIRE ENGINE CO. NO. 1, INC., License Number CC-6245 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 5.83(a) of the Liquor Control Board Regulations [40 Pa. Code §5.83(a)] in that on February 11, 2006, Licensee, by its servants, agents or employes, failed to conduct a catered event in conformity with Title 40 of the Pennsylvania Code.

The second count charges Licensee with violation of Section 493(13) of the Liquor Code [47 P.S. §4-493(13)] and Section 5.32(d) of the Liquor Control Board Regulations [40 Pa. Code §5.32(d)] in that on February 11, 2006, Licensee, by its servants, agents or employes, permitted a minor under eighteen years of age to perform in the licensed premises.

The investigation which gave rise to the citation began on January 27, 2006 and was completed on March 3, 2006; and notice of the violation was sent to Licensee by Certified Mail on March 22, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 7, 2006 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. At the hearing, counsel for the Bureau of Enforcement moved to withdraw Count 1 of the Citation. The Motion was granted.

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. B.V.R. was born on August 15, 1989, and, on February 11, 2006, he was 16 years old (N.T. 17).
2. B.V.R., as part of a three member band called Deep Incision provided entertainment in the form of music on the licensed premises on February 11, 2006 (N.T. 17-18).
3. R.K. was born on April 18, 1988, and on February 11, 2006, he was 17 years old (N.T. 24-25).
4. On February 11, 2006 R.K., as part of a three member band called Deep Incision provided entertainment in the form of music on the licensed premises (N.T. 24-25).
5. B.Y. was born on October 15, 1988, and on February 11, 2006, he was 17 years old (N.T. 29-30).
6. On February 11, 2006 B.Y., as part of a three member band provided entertainment in the form of music on the licensed premises (N.T. 30).

CONCLUSION OF LAW:

Count 2 of the citation is **sustained**.

DISCUSSION:

Section 493(13) of the Liquor Code [47 P.S. §4-493(13)] and Section 5.32(d) of the Liquor Control Board Regulations [40 Pa. Code §5.32(d)] both clearly provide that minors under the age of 18 years may not be permitted to provide entertainment on licensed premises. In this case, the three minors were each under the age of 18 and clearly as the band Deep Incision provided music for the entertainment of patrons on the licensed premises. Consequently, Count 2 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since January 6, 1994, and has had three prior violations:

Citation No. 99-1334. Fine \$250.00.

1. Sales to nonmembers.

Citation No. 02-2026. Fine \$750.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine). August 16, 2002.
2. Failed to keep records on the licensed premises. August 16, 2002.
3. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code. August 16, 2002.

Citation No. 04-0010. Fine \$600.00.

1. Sales to nonmembers. August 1 and 2, 2003.
2. Improper admission of members. August 15, 2003.
3. You conducted drawings other than those authorized by law. October 9, 2003.

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.

It is clear that the violation in this case was clearly inadvertent, and for that reason the penalty imposed will be minimal.

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

ORDER

THEREFORE, it is hereby ordered that Licensee WICONISCO FIRE ENGINE CO. NO. 1, 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.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 24th day of October, 2007.

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.

Detach here and submit stub with payment

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

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