

Mailing Date: OCT 26 2006

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1070
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-330116
	:	
v.	:	LID - 49486
	:	
MCW, INC.	:	
T/A ALLEGHENY HOUSE	:	
253-255 ALLEGHENY ST.	:	
JERSEY SHORE, PA 17740-1422	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. H-AP-894	:	

**BEFORE: JUDGE FLAHERTY**

APPEARANCES:

For Bureau of Enforcement  
Andrew J. Lovette, Esquire

For Licensee  
NO APPEARANCE

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 11, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MCW, INC., License Number H-AP-894 (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 March 26, 2006, Licensee, by its servants, agents or

employees, used, or permitted to be used on the inside (or outside) 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 March 28, 2006 and was completed on April 8, 2006; and notice of the violation was sent to Licensee by Certified Mail on April 14, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 24, 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 its behalf. A citation hearing notice was sent to Licensee(s) at its address of record, 253-255 Allegheny Street, Jersey Shore, PA 17740-1422 by certified mail, return receipt requested and by first class mail on July 7, 2006. The notice set forth the date and time of the hearing as August 24, 2006 at 1:00 p.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:

1. On March 26, 2006 at 12:10 a.m. an officer of the Bureau arrived in the vicinity of the licensed premises. She parked her car at the Jersey Shore Post Office, approximately 100 yards from the licensed premises. Upon rolling down the driver's side window, she could hear music emanating from the licensed premises (N.T. 7-8).
2. The officer entered the licensed premises at 12:27 a.m. She proceeded to the rear area of the licensed premises where she observed a disc jockey playing music through amplified loudspeakers (N.T. 8).
3. The officer turned to exit the licensed premises, and before leaving she talked with the bartender, Mike Funk. She informed him that the licensed premises needed to turn down the music (N.T. 8). The officer returned to her vehicle at the post office and maintained that position for approximately five minutes. During that time corporate officer of Licensee, Darren Weaver, exited the licensed premises and proceeded toward the post office. His mannerism indicated that he was conducting his own sound check. He returned to the licensed premises (N.T. 9).
4. At 12:35 a.m. the officer decided to conduct another sound check. During this sound check she could hear music emanating from the licensed premises approximately 75 yards away. She waited approximately 15 minutes and the music continued (N.T. 9).

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

PRIOR RECORD:

Licensee has been licensed since July 31, 2002, and has had seven prior violations:

Citation No. 03-0208. Fine \$500.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (tickets). September 18, 2002.

Citation No. 03-0347. Fine \$1,850.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 p.m. January 1, 2003.
2. Permitted dancing to a disc jockey until 2:15 a.m. January 1, 2003.
3. Sales to a visibly intoxicated person. December 31, 2002 and January 1, 2003.

Citation No. 03-0376. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 31, 2002.

Citation No. 03-2031. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 11 and 25, 2003.

Citation No. 04-1170. Fine \$750.00 and 1 day suspension. Fine not paid and license suspended 2 additional days and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. November 20, 26 and December 11, 2003.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (cards). March 13, 2004.

Citation No. 05-0090. Fine \$400.00.

1. Not a bona fide hotel in that bedrooms maintained for the accommodation of guests are insufficient in number and/or inadequately equipped. December 29, 2004.

Citation No. 05-2086. 1 day suspension and thereafter until conditions corrected.

1. Not a bona fide hotel where the public may, for a consideration, obtain meals in that you failed to provide food upon request. July 19, 25 and August 4, 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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$500.00.

ORDER

THEREFORE, it is hereby ordered that Licensee MCW, INC., pay a fine of \$500.00 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 18<sup>th</sup> day of October, 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.**