

Mailing Date: DEC 12 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1272
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-324780
v.	:	
	:	LID - 15205
GOLDRING & LIPMAN, INC.	:	
T/A WELDON'S CAFE	:	
523 S. 19 TH ST.	:	
HARRISBURG, PA 17104-2307	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-11870	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Janice Young
Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 25, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Goldring & Lipman, Inc., t/a Weldon's Cafe (Licensee), License Number R-AP-SS-11870.

This citation¹ contains four counts.

The first count charges Licensee with violations of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on February 10, 2006, and one (1) unknown date in November, 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, twenty (20) years of age.

The second count charges Licensee with violations of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)]. The charge is that on February 10, 2006, and five (5) unknown dates from November, 2005 through February 10, 2006, Licensee, by servants, agents or employes, permitted one (1) female minor, twenty (20) years of age, to frequent its licensed premises.

The third count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471]. The charge is that on January 26, February 10, 11, 12, 16, 20 and 27, 2006, Licensee's licensed establishment was operated in a noisy and/or disorderly manner.²

The fourth 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 January 26, February 10, 11, 12, 16 and 27, 2006, 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 October 27, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its Manager, Janice Young. I advised Ms. Young of Licensee's right to counsel, to cross-examine witnesses and to present testimony. Ms. Young acknowledged that she understood those rights and that she was prepared to go forward without an attorney. (N.T. 12)

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

1. Commonwealth Exhibit No. C-2, N.T. 18.

2. The Bureau motioned to withdraw the date of February 20, 2006 from Count No. 3. I granted that Motion. (N.T. 21)

FINDINGS OF FACT:

1. The Bureau began its investigation on January 5, 2006 and completed it on April 13, 2006. (N.T. 20)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on May 4, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 18)

Count Nos. 1 and 2:

3. A Bureau Enforcement Officer visited the premises on February 10, 2006, in an undercover capacity. The Officer noticed several youthful appearing patrons. The Officer contacted the local Bureau Enforcement Office. Two additional Bureau Enforcement Officers and Harrisburg City Police entered the premises to conduct an open inspection at 11:50 p.m. (N.T. 30-32)

4. The Officers found one minor age twenty (born July 18, 1985). She arrived with a group of friends somewhere between 11:30 p.m. and 11:45 p.m. She ordered multiple servings of alcoholic beverages, at one time. All of those alcoholic beverages were intended for her friends, not her. The twenty year old was not asked to show any identification. (N.T. 43-48)

5. The minor was also served at the premises on an unknown date in November, 2005. Additionally, the minor visited the premises approximately four times during the period November 5, 2005 and February 10, 2006, but did not consume any alcoholic beverages on those visits. (N.T. 49-50)

Count Nos. 3 and 4:

6. On February 10, 2006, a Bureau Enforcement Officer arrived in the area of the premises at approximately 11:15 p.m. The Officer heard amplified music escaping the premises as far away as 300 feet. The Officer entered the premises to confirm that the source of the music was the licensed premises and that the music was amplified. (N.T. 24-30)

7. A resident who lives immediately next door to the premises with an open space of approximately two to three feet between the licensed premises and the residence has been disturbed by amplified music escaping the premises. (N.T. 59)

8. These disturbances occurred on the dates charged in Count Nos. 3 and 4. (N.T. 60-72)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. **Sustained** as to February 10, 2006.

Count No. 3:

4. **Sustained** as to January 26, February 10, 11, 12, 16 and 27, 2006.

Count No. 4:

5. **Sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since February 1, 1975, and has had one prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-3, N.T. 82):

Adjudication No. 04-0258. Fine \$450.00 and 3 days suspension.

1. Sales to a minor.
September 25, 2003.
2. Not a bona fide restaurant in that food items were insufficient.
September 25 and October 7, 2003.
3. Operated the licensed establishment without a valid health permit or license.
January 1, 2003 through March 10, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count Nos. 1 and 2 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 Nos. 3 and 4 in this case.

I impose:

Count Nos. 1 and 2 – merged \$1,250.00 fine.
Count Nos. 3 and 4 – merged - \$500.00 fine.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,750.00 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

R.A.M.P. Requirements

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification was issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 5th day of December, 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.