

Mailing Date: SEP 17 2007

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

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|-----------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 06-1566 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W06-333755 |
| 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 June 29, 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 contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on May 26, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The second count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on May 27, 2006, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside 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 May 26, 2006 and was completed on May 27, 2006; and notice of the violation was sent to Licensee by Certified Mail on June 9, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 31, 2006 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. No one appeared on behalf of Licensee. 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 September 14, 2006. The notice set forth the date and time of the hearing as October 31, 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:

COUNT 1

1. On Friday, May 26, 2006 at approximately 11:15 p.m., two officers entered the licensed premises. Tending bar and rendering service to approximately 50 patrons was a female bartender heard to be called Angelique Brickell and a male bartender heard to be called Michael Funk. Also, there was a disc jockey who was providing entertainment, a combination of karaoke and dance music (N.T. 7).

2. At approximately 11:30 p.m., one of the officers noticed a patron heard to be called Scott. Scott had great difficulty maintaining his balance. When he walked, he had a severe staggered gait. On several occasions he almost fell over, and he had to catch himself and maintain his balance while he was walking on furniture and other patrons. While he was seated at the bar, he could hardly hold himself up. He had to lean on the bar, and was leaning over and bouncing into patrons seated at the bar. Funk, one of the bartenders approached Scott and asked him if he was drunk yet before he asked him what he wanted to drink. Scott just slid a bottle, an empty bottle of Coors Light on the bar and said, "I'd like another one of those." Scott was seated approximately two to three feet away from the officer when he spoke and the officer could smell the alcohol emanating from his breath (N.T. 8).

3. The officer could hardly understand what Scott said. His speech was very slurred and garbled (N.T. 8).

4. Funk retrieved a bottle of Coors Light and gave the bottle to Scott. He then took cash from Scott, placed it in the register and gave Scott change back (N.T. 8).

COUNT 2

5. On May 27, 2006 the officer again entered the licensed premises at 11:15 p.m. He found the same two bartenders tending bar. There was also the same disc jockey providing entertainment that evening (N.T. 9).

6. At 12:50 a.m. the officer noted the song "Gold Digger", by Kanye West playing on equipment inside the licensed premises. There were several speakers of various sizes spread throughout the licensed premises (N.T. 9).

7. The officer exited the licensed premises through the front door and walked east for approximately 300 feet to the Jersey Shore Police Department. At that point he could still clearly hear music emanating from the licensed premises. This was the same music he noted when he had left (N.T. 9-10).

8. The officer assessed the music emanating from the licensed premises after midnight on Sunday, May 27, 2006 (N.T. 10).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since July 31, 2002, and has had eleven 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.

Citation No. 06-0587. Fine \$1,450.00 and 1 day suspension and continuing thereafter until conditions corrected.

1. Operated the licensed establishment without a valid health permit or license. November 8, 9, 27 and December 1, 2005.
2. Refilled liquor bottles. December 21, 2005.
3. Failed to keep records on the licensed premises. December 21, 2005 and January 4, 2006.

4. Failed to keep on the licensed premises and/or provide an authorized employe of the Board/Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business. December 21, 2005 and January 4, 2006.
5. Not a bona fide hotel in that there is no kitchen apart form the public dining room or rooms in which food is regularly prepared for the public. December 21, 2005.
6. Failed to return your hotel liquor license to the board after your licensed establishment had not been in operation for a period of 15 consecutive days. January 19, 2006.

Citation No. 06-0827. Fine \$250.00 and 2 days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension. February 13, 2006.

Citation No. 06-1070. Fine \$500.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside. March 26, 2006.

Citation No. 06-1286. Fine \$200.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

1. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. April 15, 2006.

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 1 of this case.

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 Count 2 of this case.

This office takes notice that Licensee's license has previously been revoked.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 1 – Revocation of license
- Count 2 – Revocation of license

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. H-AP-894, issued to MCW, INC., be **REVOKED** effective with the mailing date of this Order. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license has already been revoked there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been **REVOKED**. The Licensee's right to renew his license is hereby CANCELLED.

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

Dated this 7th day of September, 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.