

Mailing Date: JAN 31 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2152
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-335933
v.	:	
	:	LID – 47358
MILESTONE PIZZA PUB, INC.	:	
T/A MILESTONE PIZZA PUB	:	
28 E. DIVISION ST.	:	
WILKES-BARRE, PA 18702-4130	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-10613	:	

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
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 19, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Milestone Pizza Pub, Inc., t/a Milestone Pizza Pub (Licensee), License Number R-AP-10613.

The citation¹ charges Licensee with a violation of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on July 30, 2006, Licensee, by servants, agents or employees, 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 December 14, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally nor have any representation present.

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

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on October 27, 2006 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked not deliverable as addressed. A copy of the notice was also mailed by first class mail to Colleen Flynn, 28 East Division Street, Apt. 4 Wilkes-Barre, PA 18702.

2. On October 31, 2006, I issued a Pre-Hearing Order to Licensee at the licensed premises address and to Colleen Flynn, 28 East Division Street, Apt. 4, Wilkes-Barre, PA 18702, directing Licensee to submit its pre-hearing memorandum. This Order reiterated the date, time and place of hearing.

3. The Bureau began its investigation on July 10, 2006 and completed it on August 15, 2006. (N.T. 55)

1. Commonwealth Exhibit No. C-2, 06-2152, N.T. 55.

4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 22, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 06-2152, N.T. 55)

5. On July 29, 2006, a Bureau Enforcement Officer arrived at the licensed premises at approximately 11:15 p.m. The disc jockey was set up in the rear of the premises. He was providing amplified music. At 12:05 a.m., July 30, 2006, the Officer departed the premises. He heard the music outside. (N.T. 57-61)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since April 5, 2001, and has had seven prior violations (Commonwealth Exhibit No. C-3):

Adjudication No. 02-1117. Fine \$150.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.
May 31, 2002.

Adjudication No. 02-2242. Fine \$75.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

Issued worthless checks in payment for malt or brewed beverages.
July 6, 2002.

Adjudication No. 03-0914. Fine \$350.00.

Used loudspeakers or devices whereby music could be heard outside.
May 2 and 3, 2003.

Adjudication No. 03-1974. Fine \$450.00.

Used loudspeakers or devices whereby music could
be heard outside.

November 13, 2003.

Adjudication No. 04-1994. Fine \$1800.00.

1. Minor frequenting.
July 17, 2004.
2. Sales to a minor.
July 17, 2004.
3. Discounted the price of alcoholic beverages in
excess of 2 hours in a business day.
July 28, 2004.

Adjudication No. 05-2171. Fine \$2,050.00. Fine not paid
And license suspended 5 days and thereafter until fine paid.

1. Failed to require patrons to vacate the
premises not later than one-half hour
after the required time.
September 17, 2005.
2. Permitted patrons to possess and/or remove
alcoholic beverages after 2:30 A.M.
September 17, 2005.
3. Permitted patrons to enter the premises between
2:30 A.M. and 7:00 A.M. when you did not
possess an extended hours food permit.
September 17, 2005.
4. Minors frequenting.
September 17, 2005.

Adjudication No. 06-0963. Fine \$3,000.00 and 7 days suspension with thereafter conditions. Fine not paid and license revoked.

1. Licensed corporation was not the only one pecuniarily interested in the operation of the licensed business.
June 1, 2005 through March 13, 2006.
2. Paid for purchases of malt or brewed beverages with other than cash or licensee's check.
On 12 occasions between July 15 and December 7, 2005.
3. Illegal use of Wholesale Liquor Purchase Permit Card.
On 25 occasions between June 6, 2005 and February 22, 2006.
4. Issued worthless checks in payment for malt or brewed beverages.
On 12 dates between July 15 and December 7, 2005.
5. Failed to notify the Board within 15 days of a change of manager.
June 1, 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.

As Licensee has failed to obey process, I will not interpose any mitigating circumstances. In fact, the failure to appear and/or obey process is a demonstration that Licensee does not take this process seriously. Accordingly, I impose a \$500.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee 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, 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

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 24th day of January, 2007.

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.