

Mailing Date: APR 11 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2499
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-339377
v.	:	
	:	LID - 53620
SAILTAE, INC.	:	
290 S. PENNSYLVANIA BLVD.	:	
STE. 242	:	
WILKES-BARRE, PA 18702-4413	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-15183	:	

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 November 3, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Sailtae, Inc. (Licensee), License Number R-AP-SS-15183.

The citation¹ 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 September 8 and 21, 2006, Licensee, by servants, agents or employees, used, or permitted to be used on the inside or outside 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 March 14, 2007 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally nor had representation.

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 January 26, 2007 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 "other." (N.T. 4-5)
2. On January 26, 2007, I issued a Pre-Hearing Order by first class mail directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing. (N.T. 4-5)
3. The Bureau began its investigation on September 6, 2006 and completed it on September 23, 2006. (N.T. 6)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 13, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 06-2499, N.T. 9)
5. On September 8, 2006, a Bureau Enforcement Officer arrived in the area of the premises at about 9:55 p.m. With the window down in his State vehicle, the Officer could hear music emanating from the premises. The Officer also heard music as far away as 300 feet from the premises. The Officer entered the premises and determined the music was being provided by a computerized, electronic system. (N.T. 9-13)
6. A Bureau Enforcement Officer returned to the premises at about 8:45 p.m., on September 21, 2006, making similar observations as the prior visit. (N.T. 14-17)

1. Commonwealth Exhibit No. C-2, 06-2499, N.T. 9.

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 September 16, 2004, and has had four prior violations (Commonwealth Exhibit No. C-4, N.T. 23):

Adjudication No. 05-0172. Fine \$1,250.00.
Sales to a visibly intoxicated person.
January 9, 2005.

Adjudication No. 05-0571. Fine \$550.00.
Possessed or operated gambling devices or
paraphernalia or permitted gambling or lotteries,
poolselling and/or bookmaking on your licensed
premises (machines).
February 6, 2005.

Adjudication No. 05-1268. Fine \$350.00.
Advertised or permitted to be advertised in print
alcoholic beverages within 300 feet of a
church, school or public playground.
May 23 and 27, 2005.

Adjudication No. 06-1298. Fine \$150.00.
Issued worthless checks in payment for malt
or brewed beverages.
March 16, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

As Licensee has failed to appear at the hearing and obey process, I impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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 3rd day of April, 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.