

Mailing Date: OCT 1 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2645
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-340016
v.	:	
	:	LID - 51293
PROSPECT STREET CAFÉ, INC.	:	
23 S. PROSPECT ST.	:	
NANTICOKE, PA 18634-2319	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-10788	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 22, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PROSPECT STREET CAFÉ, INC., License Number R-AP-SS-10788 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)] in that on September 26 and October 3, 2006, Licensee, by its servants, agents or employees, sold alcoholic beverages after its Restaurant Liquor License expired on August 31, 2006, and had not been renewed and/or validated.

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 October 3, 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 September 15, 2006 and was completed on October 3, 2006; and notice of the violation was sent to Licensee by Certified Mail on October 23, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 12, 2007 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 23 S. Prospect St., Nanticoke, PA 18634-2319 by certified mail, return receipt requested and by first class mail on February 28, 2007. The notice set forth the date and time of the hearing as April 12, 2007 at 10:00 a.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

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:

COUNTS 1 AND 2

1. Licensee did not have authority to dispense alcoholic beverages on September 26, 2006 or October 3, 2006 (N.T. Exhibit C-5).
2. On September 26, 2006 an officer of the Bureau arrived at the licensed premises at 6:30 p.m. (N.T. 10-11).
3. Upon entering the premises the officer observed a female bartender serving approximately six patrons (N.T. 11).
4. The officer ordered and was served a bottle of Miller Lite beer, and exited the premises at 8:00 p.m. (N.T. 11).
5. On October 3, 2006 a second officer of the Bureau made a visit to the licensed premises. He arrived at approximately 3:30 p.m. (N.T. 6-7).
6. Prior to entering the licensed premises the officer heard music emanating from the licensed premises from his automobile which was parked 150 feet from the premises (N.T. 7).

7. The officer entered the licensed premises where he observed a female bartender attending to 12 patrons (N.T. 7).

8. The officer determined that the source of the music he had heard outside was a jukebox which contained loudspeakers which were electronically amplifying the music he had heard (N.T. 7-8).

9. The officer ordered, purchased and was served a 12 ounce bottle of Michelob Ultra beer for which he paid \$2.00 (N.T. 8).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since September 3, 2003, and has had nine prior violations:

Citation No. 03-1963. Fine \$100.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. September 20, 2003.

Citation No. 04-0810. Fine \$1,700.00.

1. Issued worthless checks in payment for malt or brewed beverages. February 27, 2004.
2. Permitted lewd, immoral or improper entertainment. April 15, 2004.
3. Permitted entertainers to contact or associate with patrons. April 15, 2004.
4. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (tickets). April 15, 2004.

Citation No. 04-1227. Fine \$300.00.

1. Paid for purchases of malt or brewed beverages with other than cash or licensee's check.
January 9, 16, 23, 30, 31 and March 17, 2004.
2. Issued worthless checks in payment for malt or brewed beverages.
March 10 and 12, 2004.

Citation No. 04-1357. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside.
July 24, 2004.

Citation No. 04-1736. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside.
September 19, 2004.

Citation No. 05-0791. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages.
February 14, 18, 22, March 4, 11, 14, 17 and 18, 2005.

Citation No. 05-1612. Fine \$600.00.

1. Issued worthless checks in payment for malt or brewed beverages.
On 10 dates from March 18 through July 6, 2005.
2. Failed to keep on the licensed premises and/or provide an authorized employe of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.
July 11, 2005.

Citation No. 05-2378. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages.
July 6 and 18, 2005.

Citation No. 05-2809. Fine \$1,000.00 and 1 day suspension.

1. Sold alcoholic beverages during a time when the restaurant liquor license was suspended. November 28, 2005.
2. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension. November 28, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 1 of this case. Further, Section 471(c) requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the 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 Count 2 of this case.

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

- Count 1 - \$1,750.00 fine and one day suspension
- Count 2 - \$ 250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee PROSPECT STREET CAFÉ, INC., pay a fine of \$2,000.00 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.

IT IS FURTHER ORDERED that the restaurant liquor license (including all permits) of PROSPECT STREET CAFÉ, INC., License No. R-AP-SS-10788 be suspended for a period of one day **BEGINNING** at 7:00 a.m. on Monday, November 5, 2007 and **ENDING** at 7:00 a.m. on Tuesday, November 6, 2007.

Licensee is directed on November 5, 2007 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on November 6, 2007 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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 13th 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.