

Mailing Date: AUG 13 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0033
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-336012
v.	:	
	:	LID - 52699
MATTIS FAMILY, INC.	:	
T/A THE COUNTRY INN BAR &	:	
GRILL	:	
615 RAGERS HILL RD.	:	
SOUTH FORK, PA 15956-9801	:	
	:	
	:	
CAMBRIA COUNTY	:	
LICENSE NO. R-AP-SS-13766	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Nadia L. Vargo, Esquire
Pennsylvania State Police
313 Mt. Nebo Road
Pittsburgh, PA 15237-1305

For Licensee
Robert D. Gleason, Esquire
Myron I. Markovitz, Esquire
206 Main Street
Johnstown, PA 15901-1682

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 24, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Mattis Family, Inc., t/a The Country Inn Bar & Grill (Licensee), License Number R-AP-SS-13766.

The citation¹ charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471]. The charge is that on August 4, 17, 26, September 9, 23, 29, October 7, 14, 27 and November 9, 2006, Licensee's licensed establishment was operated in a noisy and/or disorderly manner.

An evidentiary hearing was conducted on July 19, 2007 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on July 12, 2006 and completed it on December 6, 2006. (N.T. 15)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on December 26, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

3. The licensed premises is surrounded on three sides by a parking lot which is part of the property upon which the premises is situated and further part of the operation of the business as customers park in that lot. (N.T. 22-24)

4. A husband and wife who live approximately 300 feet from the premises have been disturbed by the operation of the business on the following dates and manners:

- a. August 4, 2006 - Loud music was emanating from the premises which disturbed the neighbors at their home. The disturbance began about 12:30 a.m. Approximately ten to fifteen customers were leaving. There was loud yelling in the parking lot. (N.T. 31-33)

1. Commonwealth Exhibit No. C-2, N.T. 8.

- b. August 17, 2006 – Individuals were revving their engines from both trucks and motorcycles in the parking lot of the licensed premises as they were leaving. (N.T. 34)
- c. August 26, 2006 – Individuals in the parking lot of the premises were blowing horns prior to leaving. (N.T. 35-36)
- d. September 9, 2006 – A group of approximately 50 motorcyclists stopped at the licensed premises. Drinking of an undetermined beverage occurred in the parking lot for approximately 30 to 45 minutes. As they were exiting the parking lot, the motorcyclists revved their engines. Some of the sports bikers did tire burn outs. This occurred between 5:00 p.m. and 6:00 p.m. (N.T. 36-73)
- e. September 23, 2006 – There was excessive revving of motorcycle engines by individuals in the parking lot. (N.T. 37)
- f. September 29, 2006 – There was excessive revving of motorcycle engines and tire burn outs at the parking lot. (N.T. 37-38)
- g. October 14, 2006 – As the neighbors came home at approximately 10:00 p.m., they heard loud music coming from the premises. (N.T. 41)
- h. October 27, 2006 – Somewhere between 2:00 a.m. and 3:00 a.m., one of the neighbors was woken out of sleep. He saw two people in the parking lot screaming at each other and engaging in a fight. (N.T. 42)
- i. November 9, 2006 – At about 3:00 a.m., the neighbors were awake from sleep by yelling and loud behavior in the parking lot as the last few vehicles were exiting. (N.T. 43)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Licensee's licensed establishment was operated in a noisy and/or disorderly manner, on August 4, 17, 26, September 9, 23, 29, October 14, 27 and November 9, 2006.

DISCUSSION:

In Adjudication No. 06-0210, involving Licensee, I commented about an agreement between the complainants and Licensee. Both sides questioned witnesses regarding that agreement in an attempt to show the other side failed to comply with its conditions.

I was not impressed with that line of questioning because the agreement seems to have been more of a general commitment to maintain peace and quiet in the neighborhood. The breakdown in this endeavor is caused by a lack of communication between Licensee and the complainants. Each believes there is justification for that breakdown but, even if accurate, these justifications do not alter the reality that cooperation has ceased.

As to the violation, I start with the premise that Licensee is responsible to control the conduct of individuals in its parking lot; the parking lot is an integral part of its business. Those living near the licensed premises ought to be able to enjoy the peace and quiet of their home without unreasonable disturbance. Accordingly, I sustain the charge for all dates except October 7, 2006 for which no testimony was offered.

Balanced against this is the proposition that Licensee is engaged in a lawful business which includes serving a dangerous drug up to the point of visible intoxication. It is the duty of patrons to behave civilly, particularly when in public areas, even though impaired.

I also recognize Licensee is open seven days per week, 11:00 a.m. to 2:00 a.m., the following day (N.T. 79-80). From the date of the first disturbance (August 4, 2006) to the last (November 9, 2006), an interval of nearly 100 days, the complainants were disturbed on nine of them. Some of those disturbances were measured in minutes and some in hours. I am not belittling the discomfort suffered by the complainants. Rather, I am putting the problem into a perspective.

I believe Licensee has taken measures to mitigate the problems. Obviously, those steps have fallen short of what is really needed. Whatever penalty I impose will not alter the path Licensee is on, should efforts to control its operation not improve. Whether by Adjudication or refusal to renew, Licensee is on the road to total economic destruction should Licensee fail to control the business.

What is also apparent is the inability of police to control individuals because of inadequate resources. As I have indicated in other Adjudications, our laws actually exacerbate the problem. Licensees must release customers from a licensed premises no later than one-half hour after service of alcoholic beverages must cease. The result is sometimes a mass of customers, who have been drinking, leaving at once.

There being no time allowed for patrons to return to sobriety, the inevitable result is people whose civility, motor skills and judgment are impaired, departing a licensed premises en masse, using our highways and streets to negotiate their way to their next destination. No small wonder then that police are outnumbered.

PRIOR RECORD:

Licensee has been licensed since April 19, 2004, and has had three prior violations:

Adjudication No. 05-1409. Fine \$100.00.

Used loudspeakers or devices whereby music could be heard outside.

April 2 and May 14, 2005.

Adjudication No. 05-2751. Fine \$700.00.

1. Used loudspeakers or devices whereby music could be heard outside.

On 17 dates between September 22 and November 27, 2005.

2. Noisy and/or disorderly operation.

On 19 dates between September 22 and November 27, 2005.

Adjudication No. 06-0210. Fine \$300.00.

Used loudspeakers or devices whereby music could be heard outside.

December 3, 4 and 31, 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.

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 10th day of August, 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.