

Mailing Date: OCT 30 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0721
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-340720
v.	:	
	:	LID - 56442
END ZONE BAR & GRILL, INC.	:	
216 N. 10 TH ST.	:	
KULPMONT, PA 17834-1202	:	
	:	
	:	
NORTHUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-3566	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
William D. Henry, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 12, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against END ZONE BAR & GRILL, INC., License Number R-AP-SS-3566 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5514 of the Crimes Code [18 Pa. C.S. §5514] in that on October 9, 2006, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

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 January 13 and 14, 2007, 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 28, 2006 and was completed on March 2, 2007; and notice of the violation was sent to Licensee by Certified Mail on March 13, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 11, 2008 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania.

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 October 9, 2006 three officers of the Bureau entered the licensed premises shortly after 5:00 p.m. (N.T. 22).
2. The three officers took seats at the bar where they observed two or three other patrons being served by a female bartender (N.T. 23).
3. The officers each ordered beverages, and sat at the bar having a conversation. During the conversation one of the officers observed on the back of the bar what appeared to be "football pick tickets." These tickets are sheets for picking football games for the purpose of betting money on the winners of the games (N.T. 23).
4. The officer looked at the tickets and determined that the ticket was set up so that if a better picked four teams, and each of the teams won, he would receive back 10 times his bet (N.T. 24-26).
5. One of the officers asked the bartender if he could get the pick tickets to make a bet. The bartender said, "Sure." She handed the officer the whole pack of tickets. The officer took the top ticket and circled four teams that he thought would win and filled out the stub. He bet \$1.00 and gave the stub with all the other tickets and the \$1.00 back to the bartender. The bartender stuck the \$1.00 with the tickets with a rubber band around them (N.T. 26-28 and Exhibit C-4).

COUNT 2

6. On January 13, 2007 at 11:55 p.m., two officers of the Bureau arrived in the vicinity of the licensed premises (N.T. 39).

7. The officers exited their vehicle and began walking towards the licensed premises. As they were walking toward the establishment they were able to hear music emanating from within (N.T. 39).

8. The officers entered the licensed premises and observed that a band using the name Rumor Has It was playing music for the entertainment of patrons. The music was electronically amplified through loudspeakers (N.T. 39-40).

9. The officers departed the licensed premises at 12:59 a.m., now January 14, 2007. As the officers walked away from the licensed premises they could hear music emanating from within the licensed premises at distances up to 40 feet (N.T. 40-41).

CONCLUSIONS OF LAW:

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

DISCUSSION:

COUNT 1

The record establishes that a bartender on the licensed premises had possession of and handed out football pick tickets for an officer of the Bureau to bet upon. It is, therefore, clear that betting on football games was taking place on the licensed premises. It is also clear, that the bartender in charge on the premises knew about the betting since she was the one that handed the officer the ticket. Thus, it is clear that she knew or should have known that illegal gambling was taking place on the licensed premises. Consequently, I conclude that the Bureau has met its burden and Count No. 1 of the citation is sustained.

COUNT 2

The record establishes that officers of the Bureau could hear amplified music emanating from the licensed premises before they entered on January 13, 2007 at 11:55 p.m. and after they exited the premises one hour later on January 14, 2007. Thus, it is clear that the Bureau has met its burden with respect to this count, and Count No. 2 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since August 25, 2006, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

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

Count 1 - \$500.00 fine

Count 2 - \$350.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee END ZONE BAR & GRILL, INC., pay a fine of \$850.00 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.

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

Dated this 21st day of October, 2008.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

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.

Detach here and submit stub with payment

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

Citation No. 07-0721
End Zone Bar & Grill, Inc.