

Mailing Date: NOV 20 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1133
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-339280
v.	:	
	:	LID - 49443
NINE IS ENOUGH, INC.	:	
T/A THE DRAFT HOUSE	:	
670-672 BAER AVE.	:	
HANOVER, PA 17331-2705	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-19733	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 31, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Nine Is Enough, Inc., t/a The Draft House (Licensee), License Number R-AP-19733.

This citation¹ contains three counts.

The first count charges Licensee with violations of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that from June 1 through December 26, 2006, Licensee, by servants, agents or employes, operated its licensed establishment without a valid health permit or license, which expired on May 31, 2006.

The second count 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 December 29, 31, 2006, January 3, 4, 5, 6, 10, 11, 12, 16, 19, 27 and February 2, 2007, Licensee, by servants, agents or employes, 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.

The third count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471]. The charge is that on December 29, 31, 2006, January 3, 4, 5, 6, 10, 11, 12, 16, 19, 27 and February 2, 2007, Licensee's licensed establishment was operated in a noisy and/or disorderly manner.

An evidentiary hearing was conducted on October 15, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee did not appear personally or have any 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 August 30, 2007 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. On the same date, I issued a Pre-Hearing Order directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing. (N.T. 4)
2. The Bureau began its investigation on September 6, 2006 and completed it on April 12, 2007. During the course of that investigation, a Bureau Enforcement Officer conducted undercover visits to the premises on five occasions finding no violations. (N.T. 10-12)

1. Commonwealth Exhibit No. C-3, N.T. 24.

3. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 23, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 24)

Count No. 1:

4. On an additional visit of December 27, 2006, at a time when the premises was open and in operation selling alcoholic beverages, a Bureau Enforcement Officer conducted an administrative inspection. He was accompanied by representatives of the Pennsylvania Department of Agriculture, Food Safety Division. Licensee's health license expired on May 31, 2006. The Department of Agriculture is equipped to allow licensee's to renew on the spot. Licensee did so. Licensee's Corporate President admitted to the Enforcement Officer Licensee operated continuously from June 1 through December 26, 2006 without the health license. (N.T. 15-16)

5. The issue with respect to the health license was that Licensee failed to pay fees. There were no health violations. (N.T. 18-19)

Count Nos. 2 and 3:

6. A neighbor who lives across the street from the premises has been disturbed by amplified music escaping there from. He lives with three other persons. (N.T. 26-27)

7. On the dates charged in Count Nos. 2 and 3, the neighbor and his family have been disturbed in their home by amplified music escaping the premises. On a typical evening, the music would begin at approximately 10:00 p.m. and continue until 2:00 a.m. or 2:30 a.m., the following morning. The neighbor kept a log of disturbances. His family was disturbed by amplified music escaping the licensed premises on dates not listed in the log. The neighbor made entries into a log book only when the disturbances were rather severe.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since May 21, 2002, and has had five prior violations (Commonwealth Exhibit No. C-6):

Adjudication No. 03-0617. Fine \$600.00.

1. Used loudspeakers or devices whereby music could be heard outside.
September 20 and October 20, 2002.
2. Noisy and/or disorderly operation.
September 20 and October 20, 2002.
3. Engaged in disorderly conduct.
October 20, 2002.
4. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (sports pools).
February 27, 2003.

Adjudication No. 04-0408. Fine \$2,300.00.

1. Used loudspeakers or devices whereby music could be heard outside.
April 27, May 11, June 14, 21, July 19, August 10 and 30, 2003.
2. Sales to a visibly intoxicated person.
June 21, 2003.
3. Noisy and/or disorderly operation.
On 22 dates from April 27 through October 17, 2003.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
November 26, 2003.
5. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 A.M.
November 26, 2003.

Adjudication No. 06-0896. Fine \$1,000.00. Fine not paid and 1 day suspension and thereafter until fine is paid imposed.

- Failed to appoint a Board-approved full-time manager for the licensed premises.
April 9, 2005 through March 8, 2006.

Adjudication No. 06-1245. Fine \$150.00. Fine not paid and 1 day suspension and thereafter until fine is paid imposed.
Issued worthless checks in payment for malt or brewed beverages.
March 22, 2006.

Adjudication No. 06-2324. Fine \$1,000.00. Fine not paid and license suspended 1 day and thereafter until fine paid.
Issued worthless checks in payment for malt or brewed beverages.
July 28, August 7 and 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 Count Nos. 1, 2 and 3 in this case.

Licensee has failed to appear or obey process. I am advised Licensee is now closed. Given Licensee's lengthy prior citation history and the circumstances of this case, I impose:

Count No. 1 – Revocation of license.
Count No. 2 – Revocation of license.
Count No. 3 - Revocation of license.

ORDER:

Imposition of Revocation

THEREFORE, it is hereby ordered that Restaurant liquor license (including all permits) No. R-AP-19733, issued to Nine Is Enough, Inc., t/a The Draft House, be **REVOKED**, effective at 7:00 a.m., on Monday, January 14, 2008. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby **CANCELLED**.

Licensee is directed to remove its license from the wall on Monday, January 14, 2008 and return the license and Wholesale Liquor Purchase Permit Card and/or discount card to the Pennsylvania Liquor Control Board, Department of Licensing, Northwest Office Building, Third and Forester Streets, Harrisburg, Pennsylvania 17124-0001, personally or by certified mail so as to be received no later than Monday, January 21, 2008.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 7th day of November, 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.