

Mailing Date: DEC 17 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1552
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-354422
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 July 23, 2007, 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 a violation of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on June 7, 2007, Licensee, by servants, agents or employes, used, or permitted to be used on the 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 November 7, 2007 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, 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 September 25, 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 unclaimed.
2. On September 25, 2007, I issued a Pre-Hearing Order by first class mail to the licensed premises directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing.
3. The Bureau began its investigation on May 19, 2007 and completed it on June 10, 2007. (N.T. 14)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on June 11, 2007. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, 07-1552, N.T.18)
5. On the date charged, a Bureau Enforcement Officer was outside the premises at approximately 9:15 p.m. He was in an outside patio area. Music was being provided through an amplification system in the outdoor area. The Officer heard the music emanating from that area.

1. Commonwealth Exhibit No. C-2, 07-1552, N.T. 18.

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 nine prior violations:

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 the 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.

Adjudication No. 06-2499. Fine \$1,000.00.
Used loudspeakers or devices whereby music could
be heard outside.
September 8 and 21, 2006.

Adjudication No. 06-2819. Fine \$1,000.00.
Issued worthless checks in payment for malt or
brewed beverages.
September 6, 2006.

Adjudication No. 07-0265. Fine \$250.00 and 3 days suspension.

1. Sales to minors.
December 16, 2006.
2. Fortified, adulterated and/or contaminated liquor.
January 17, 2007.

Adjudication No. 07-0562. 1 day suspension.
Issued worthless checks in payment for malt or
brewed beverages.
November 21, 2006.

Adjudication No. 07-0933. 3 days suspension.
Sales to a minor.
March 24, 2007.

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.

If Licensee will not obey process or at least attend the hearing, I will interpose no mitigating factors. I impose a \$1,000.00 fine and 30 days suspension of the Amusement Permit.

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.

Suspension of the Amusement Permit

IT IS FURTHER ORDERED that Amusement Permit No. 15183, issued to Sailtae, Inc., be suspended for a period of 30 days, beginning at 7:00 a.m., Monday, January 28, 2008 and ending at 7:00 a.m., Wednesday, February 27, 2008. Licensee is directed to place the enclosed label over the Amusement Permit portion of the license on or before the effective date of said suspension.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 4th day of December, 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.

Detach Here and Return Stub with Payment

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, PA 17110-9661

Citation No. 07-1552