

Mailing Date: NOV 10 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1691
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-345965
v.	:	
	:	LID - 34140
MILL STREET SPORTS,	:	
INCORPORATED	:	
T/A SHAKEY'S	:	
312 MILL ST.	:	
HERSHEY, PA 17033-1655	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-EHF-7997	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Frank C. Sluzis, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 2, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MILL STREET SPORTS, INCORPORATED, License Number R-AP-SS-EHF-7997 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on December 16, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to three male minors, nineteen years of age.

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 19, March 18, 31, April 20, May 26 and June 8, 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 January 5, 2007 and was completed on June 20, 2007; and notice of the violation was sent to Licensee by Certified Mail on July 3, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 26, 2008 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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. E.G. was born on July 9, 1987, and, in December of 2006, he was nineteen years old (N.T. 43, 47-48).
2. R.H. was born on April 26, 1987, and, in December of 2006, he was nineteen years old (N.T. 54).
3. S.M.P. was born on November 12, 1987, and, in December of 2006, he was nineteen years old (N.T. 64 and 73).
4. On December 16, 2006, E.G. entered the licensed premises with R.H. and S.M.P. and a middle-aged gentleman whom they had met at another establishment (N.T. 44-46).
5. Upon entry, E.G. was not asked for identification, nor was he questioned as to age (N.T. 47).
6. While on the licensed premises, E.G. ordered and was served and paid for between one and three Budweiser beers. He also consumed liquor while he was on the licensed premises. The liquor was purchased for him by the middle-aged man (N.T. 48-49 and 52).
7. On December 16, 2006, R.H. entered the licensed premises with E.G. and S.M.P. and the aforementioned middle-aged gentleman. When he went in he was not stopped by anyone, nor was he asked for identification, or how old he was (N.T. 55, 57-58).

8. Upon entry, R.H. went to the bar where he ordered a Budweiser beer. During the time he was on the licensed premises he consumed between one and three beers, and a shot of Yukon Jack whiskey, all of which he ordered and paid for himself (N.T. 58-59).

9. On December 16, 2006, S.M.P. entered the licensed premises with R.H. and E.G. and the aforementioned middle-aged gentleman (N.T. 68-69).

10. Upon entry S.M.P. was asked for his identification by an employe. However, the middle-aged gentleman told the employe that all three of the minors were over 21 years old and they were allowed to enter without showing identification (N.T. 68-69).

11. While he was on the licensed premises, S.M.P. consumed beer and a shot of Yukon Jack whiskey which he ordered, but which was paid for by the aforementioned middle-aged gentleman (N.T. 69-71).

COUNT 2

12. On January 19, 2007, two officers of the Bureau entered the licensed premises in undercover capacities. Upon entry, they observed musical instruments set up on a stage area. Shortly thereafter a band began to perform. The music provided by the band was amplified through loudspeakers. While the band was performing, the officers exited the licensed premises, and could hear the electronically amplified music emanating from the licensed premises at distances up to 230 feet from the corner of the building (N.T. 11-13).

13. On March 17, 2007, an officer of the Bureau entered the licensed premises at 11:20 p.m. Upon entry, the officer observed a band performing music for the entertainment of patrons. The music provided by the band was amplified through loudspeakers. The officer departed the licensed premises at 12:16 a.m., now March 18, 2007, and was able to hear amplified music emanating from the licensed premises at distances up to 130 feet (N.T. 13-14).

14. On March 30, 2007 at 11:10 p.m., the officer again made an undercover visit to the licensed premises. Upon entry, the officer observed musical instruments set up on the stage area. Approximately 20 minutes later, a band came to the stage and began to perform. The music provided by the band was amplified through loudspeakers. At 12:05 a.m., now March 31, 2007, while the band was performing, the officer departed the licensed premises and could hear the amplified music emanating from the licensed premises at distances up to 200 feet (N.T. 14-16).

15. On April 19, 2007 the officer arrived at the licensed premises at 11:45 p.m. Upon entry the officer observed that karaoke was being performed by patrons. The singing of the patrons and the accompanying music was amplified through loudspeakers. The officer departed the premises at 12:50 a.m., now April 20, 2007 and could hear the amplified music emanating from the licensed premises at distances up to 110 feet (N.T. 16-17).

16. On May 26, 2007 two officers of the Bureau arrived in the vicinity of the licensed premises. The officers parked their vehicle in the parking lot and they were able to hear music coming from the licensed premises at distances up to 134 feet from the building. The officers entered the licensed premises and observed that the music was coming through loudspeakers located throughout the licensed premises (N.T. 22-23).

17. On June 8, 2007 an officer of the Bureau arrived in the area of the licensed premises and could hear music emanating from the licensed premises at distances up to 108 feet. The officer entered the licensed premises and verified that the music was coming from inside.

CONCLUSIONS OF LAW:

1. Count No. 1 of the citation is **sustained**.
2. Count No. 2 of the citation is **sustained** as to the dates of January 19, March 18, March 31, April 20 and May 26, 2007, and **dismissed** as to the date of June 8, 2007.

DISCUSSION:

COUNT 1

The record establishes that the three minors were served beer and whiskey on the licensed premises on the date in question. Further, there is no evidence in the record which would indicate that the minors filled out Declaration of Age Cards, had their licenses duplicated or had their license run through electronic scanner devices. Consequently, I conclude that the charge in Count No. 1 of the citation is sustained.

COUNT 2

The record establishes that officers of the Bureau heard music amplified over loudspeakers emanating from the licensed premises on all dates charged except June 8, 2007. With respect to June 8, 2007 the record indicates that officers heard music which originated on the licensed premises, but contains no evidence as to its source. The regulation in question requires that sound must be amplified through loudspeakers in order to constitute a violation. Since there is no evidence to establish that with respect to June 8, 2007, the charge in Count No. 2 must be dismissed as to that date.

Based upon the foregoing, I conclude that the charge in Count No. 2 of the citation is sustained as to all dates charged except June 8, 2007, and is dismissed as to that date.

PRIOR RECORD:

Licensee has been licensed since April 1, 1994, and has had nine prior violations:

Citation No. 97-1356. Fine \$150.00.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Noisy and/or disorderly operation.

Citation No. 98-0593. Fine \$400.00.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Noisy and/or disorderly operation.

Citation No. 01-0943. Fine \$700.00.

1. Used loudspeakers or devices whereby music could be heard outside.
January 18, 26 and February 17, 2001.
2. Noisy and/or disorderly operation.
January 18, 26 and February 17, 2001.

Citation No. 02-0101. Fine \$1,850.00, 2 days suspension and Amusement Permit suspended for 15 days.

1. Used loudspeakers or devices whereby music could be heard outside.
On 11 dates between September 7 and December 8, 2001.
2. Noisy and/or disorderly operation.
On 4 dates between September 7 and December 8, 2001.
3. Sales to a visibly intoxicated person.
October 12, 2001.

Citation No. 02-0849. Fine \$1,700.00, 1 day suspension and Amusement Permit suspended for 15 days.

1. Noisy and/or disorderly operation.
On 7 dates between January 18 and March 23, 2002.
2. Used loudspeakers or devices whereby music could be heard outside.
January 18, 19, February 2, 14, 16, 23 and 26, 2002.

Citation No. 02-1431. Fine \$200.00.

Used loudspeakers or devices whereby music could be heard outside.

April 12 and 13, 2002.

Citation No. 05-2678. Fine \$2,950.00 and RAMP training mandated.

1. Sales to a visibly intoxicated person. September 22, 2005.
2. Used loudspeakers or devices whereby music could be heard outside. September 23, October 19 and 22, 2005.

Citation No. 06-1156. Fine \$2,000.00.

1. Sales to a minor.
February 4 and 5, 2006.
2. Used loudspeakers or devices whereby music could be heard outside.
January 14 and February 3, 2006.

Citation No. 06-2731. Fine \$2,750.00, 1 day license suspension and 20 days suspension of Amusement Permit.

1. Noisy and/or disorderly operation. December 22 and 24, 2005.
2. Used loudspeakers or devices whereby music could be heard outside. June 9, 16, 17, July 13, 20 and August 11, 2006.
3. Sales to a minor. September 24, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 1 of this case.

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.

This office takes notice that Licensee was RAMP certified effective January 29, 2008.

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

Count 1 - \$3,000.00 fine and 20 days suspension
Count 2 - \$1,000.00 fine and 10 days suspension

ORDER

THEREFORE, it is hereby ordered that Licensee MILL STREET SPORTS, INC., pay a fine of \$4,000.00 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 MILL STREET SPORTS, INC., License No. R-AP-SS-EHF-7997 be suspended for a period of thirty days **BEGINNING** at 7:00 a.m. on Monday, January 26, 2009 and **ENDING** at 7:00 a.m. on Wednesday, February 25, 2009.

Licensee is directed on January 26, 2009 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 February 25, 2009 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee must remain in compliance until **October 30, 2009**.

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

Dated this 30th day of October, 2008.



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. 07-1691
Mill Street Sports, Inc.