

Mailing Date: SEP 23 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2742
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W02-363017
	:	
ROSVAND ENTERPRISES, LLC	:	
47 BELMONT ST.	:	LID - 54353
CARBONDALE, PA 18407-1642	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-1563	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 3, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Rosvand Enterprises, LLC (Licensee), License Number R-AP-SS-1563.

This citation 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 October 20, 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.

An evidentiary hearing was conducted on August 13, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have any representation at the hearing.

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 June 26, 2008 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 signed for by Cynthia Rosar on June 30, 2008. (N.T. 11)
2. On June 26, 2008, I issued a Pre-Hearing Order, by first class mail, directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing. (N.T. 11)
3. The Bureau began its investigation on October 12, 2007 and completed it on October 22, 2007. (N.T. 12)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 1, 2007. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 12)

1. Commonwealth Exhibit No. C-2, N.T. 13.

5. On October 20, 2007, a Bureau Enforcement Officer was in the area of the premises at 10:15 p.m. He parked his vehicle approximately one block away from the premises. As he approached the premises, he could hear music coming from inside. There were approximately 25 to 30 residents between the spot at which the Officer heard the music and the licensed premises. The Officer estimated the farthest distance which he could hear the music at somewhere between 400 to 450 feet. (N.T. 15-18)

6. The Officer entered the premises and noticed the music was being provided through an electronically amplified sound system. The Officer did not stay long as the music was "intolerable" to hear. (N.T. 18-20)

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 March 11, 2005, and has had eight prior violations (Commonwealth Exhibit No. C-3, N.T. 24 and 26):

Adjudication No. 05-1907. Fine \$500.00 and 1 day suspension with thereafter conditions.

1. Sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.
On 12 dates between June 26 and July 27, 2005.
2. Not a bona fide restaurant in that food items were insufficient.
July 28, 2005.
3. Permitted entertainment after 2:00 a.m.
June 4, 2005.

Adjudication No. 06-0848. Fine \$250.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.
February 25, 2006.

Adjudication No. 06-2333. Fine \$300.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.

May 26, 2006.

Adjudication No. 06-2577. Fine \$1,250.00.

Sales after the restaurant liquor license expired on September 30, 2006 and had not been renewed and/or validated.

October 5, 2006.

Adjudication No. 07-0322. Fine \$350.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.

December 9, 2006.

2. Permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m. when you did not possess an extended hours food license.

December 9, 2006.

Adjudication No. 07-1563. Fine \$400.00. Fine not paid and license suspended for 1 day suspension and continuing thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.

April 14 and 28, 2007.

Adjudication No. 07-1904. Fine \$500.00. Fine not paid and license suspended for 1 day and continuing thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.

July 19, 2007.

Adjudication No. 07-2096. Fine \$200.00. Fine not paid and license suspended for 1 day and continuing thereafter until fine paid.

1. Failed to maintain coil cleaning records.
July 25, 2007.
2. Failed to clean coils at least once every 7 days.
July 25, 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.

As Licensee has failed to obey process and seems not to take these matters seriously, I impose a \$1,000.00 fine and 15 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.

Amusement Permit Suspension

THEREFORE, it is ordered that Amusement Permit No. AP-1563, issued to Rosvand Enterprises, LLC, be suspended for a period of fifteen days, effective at 7:00 a.m. on Thursday, November 20, 2008 and ending at 7:00 a.m., Friday, December 5, 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 18th day of September, 2008.

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. 07-2742
ROSVAND ENTERPRISES, LLC