

Mailing Date: OCT 16 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2781C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-360801
v.	:	
	:	LID - 55964
MOUNTAIN TOP ASSOCIATES, INC.	:	
T/A DENVER HOUSE	:	
240 MAIN ST.	:	
DENVER, PA 17517-1614	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. H-AP-SS-2149	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
John D. Buccolo, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 6, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MOUNTAIN TOP ASSOCIATES, INC., License Number H-AP-SS-2149 (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 October 10, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, 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 September 22 and October 5, 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 3, 2007 and was completed on October 12, 2007; and notice of the violation was sent to Licensee by Certified Mail on November 8, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on May 8, 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. C.F. was born on November 11, 1987, and, in October of 2007, he was 19 years old (N.T. 36-37).
2. On October 10, 2007 C.F. entered the licensed premises at 7:10 p.m. (N.T. 37).
3. When C.F. first entered there was no bartender at the bar counter, and he had to wait. The bartender came in and C.F. asked for an alcoholic beverage. The bartender pointed to the wall where there was a cooler. C.F. retrieved a six pack of Bud Light bottles and went to the bar counter. The bartender told him the amount of the purchase was \$6.00. C.F. handed the bartender a \$20.00 bill and received \$13.50 in change. C.F. then exited the premises taking the beer with him (N.T. 37-38).

COUNT 2

4. On September 21, 2007 at 11:35 p.m. an officer of the Bureau entered the licensed premises (N.T. 9).
5. Upon entry the officer observed that there was a jukebox available providing music for the entertainment of patrons. The music from the jukebox was amplified through loudspeakers (N.T. 10-11).
6. At 12:35 a.m., now September 22, 2007 the officer left the licensed premises while music was being played on the jukebox (N.T. 10-11).

7. The officer conducted a noise check and could hear music emanating from the licensed premises at distances up to 114 feet (N.T. 9-12).

8. The officer returned to the licensed premises on October 5, 2007 at 11:40 p.m. Upon entry, the officer again observed that a jukebox was playing music amplified through loudspeakers (N.T. 12).

9. The officer departed the licensed premises and could hear music emanating from the licensed premises at distances up to 144 feet (N.T. 12-13).

CONCLUSIONS OF LAW:

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

DISCUSSION:

COUNT 1

The record clearly establishes that a 19 year old male minor was served alcoholic beverages on the licensed premises without question relative to age. Consequently, the charge in Count 1 of the citation is sustained.

COUNT 2

The record clearly indicates that an officer of the Bureau could hear music amplified through loudspeakers emanating from the licensed premises on the dates charged. It is, therefore, clear that Count 2 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since March 9, 2006, and has had one prior violation:

Citation No. 07-1277. Fine \$2,500.00 and RAMP training mandated.

1. Used loudspeakers or devices whereby music could be heard outside. January 22, 24, February 9, 16, 17 and April 13, 2007.
2. Sales to visibly intoxicated persons. December 1, 2006.
3. Operated the licensed establishment without a valid health permit or license. February 8 through April 19, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 1 of this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

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.

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

Count 1 - \$1,250.00 fine and Licensee must remain in compliance
Count 2 - \$ 500.00 fine

As Licensee has complied with Liquor Code Section 471.1 [47 P.S. §4-471.1] relating to RAMP and has been certified effective February 11, 2008 for a period of two years, I now order Licensee to remain in compliance up to **October 1, 2009**.

ORDER

THEREFORE, it is hereby ordered that Licensee MOUNTAIN TOP ASSOCIATES, INC., pay a fine of \$1,750.00 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 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 1, 2009**.

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

Dated this 1st 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

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