

Mailing Date: OCT 08 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2843
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-362820
v.	:	
	:	LID - 38605
DALE J. SPENCER ENTERPRISES,	:	
INC.	:	
T/A SPENCER'S WESTERN CAFE	:	
756 STATE RT. 118	:	
SWEET VALLEY, PA 18656-9785	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-15167	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18602

For Licensee
Doreen Schrader – President,
Secretary/Treasurer, Director
And Stockholder

Bart Schrader – Manager and
Steward

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 12, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Dale J. Spencer Enterprises, Inc., t/a Spencer's Western Cafe (Licensee), License Number R-AP-SS-15167.

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 October 27, 2007, Licensee, by servants, agents or employees, 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 September 4, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its President/Secretary/Treasurer/Director and Stockholder Ms. Doreen Schrader and its Manager and Steward, Mr. Bart Schrader

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on October 11, 2007 and completed it on October 27, 2007. (N.T. 9)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 9, 2007. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

3. A Bureau Enforcement Officer visited the premises on October 27, 2007. He arrived at approximately 9:45 p.m. He heard music emanating from the premises as far as 85 feet away. At the greatest distance, the Officer heard only bass. As he came closer to the premises, he also heard lyrics and music. The Officer entered the premises at 9:50 p.m., discovering the source of the music was a disc jockey using electronically amplified equipment as part of a Halloween party. The Officer departed the premises at 11:00 p.m. and again could hear the music as far away as 85 feet. (N.T. 9-12)

4. Licensee has decided not to have any entertainment of the sort which gave rise to the instant citation. The only source of music will be the jukebox. (N.T. 39)

1. Commonwealth Exhibit No. C-2, N.T. 7.

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 July 24, 1996, and has had thirteen prior violations (Commonwealth Exhibit No. C-3, N.T. 31):

Adjudication No. 97-0443. Fine \$100.00.

Sold malt or brewed beverages in excess of 192
fluid ounces for consumption off premises.

Adjudication No. 97-0966. Fine \$150.00.

Used loudspeakers or devices whereby music could
be heard outside.

Adjudication No. 98-0236. Fine \$500.00.

Possessed or operated gambling devices or
paraphernalia or permitted gambling or lotteries,
poolselling and/or bookmaking on the licensed
premises (machine).

Adjudication No. 03-2071. Fine \$300.00.

Used loudspeakers or devices whereby music could
be heard outside.
November 22, 2003.

Adjudication No. 04-0498. Fine \$400.00.

Used loudspeakers or devices whereby music could
be heard outside.
March 6, 2004.

Adjudication No. 04-1489. Fine \$1,350.00.

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 May 19 and July 15, 2004.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pool).
July 28, 2004.
3. Used loudspeakers or devices whereby music could be heard outside.
June 26, 2004.

Adjudication No. 04-1728. Fine \$1,250.00.

Sales after the restaurant liquor license expired on August 31, 2004 and had not been renewed and/or validated.
September 11 and 20, 2004.

Adjudication No. 04-1875. Fine \$200.00.

Failed to appoint a Board approved full time manager for the licensed premises.
Subsequent to May 1, 2004.

Adjudication No. 05-0163. Fine \$100.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

Issued worthless checks in payment for malt or brewed beverages.
December 22, 2004.

Adjudication No. 05-1124. Fine \$750.00.

Used loudspeakers or devices whereby music could be heard outside.
May 6 and 7, 2005.

Adjudication No. 06-0742. 3 days suspension.

Sales to a minor.
February 25, 2006.

Adjudication No. 06-2110. Fine \$1,200.00, 1 day suspension and RAMP training mandated.

Sales to a visibly intoxicated person.

August 17, 2006.

Adjudication No. 07-2579. Fine \$250.00.

Sold malt or brewed beverages in excess of

192 fluid ounces for consumption off premises.

September 23, 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.

I impose a \$100.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$100.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 2nd 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. 07-2843
DALE J. SPENCER ENTERPRISES, INC.