

Mailing Date: OCT 20 2008

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

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|----------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 08-0195 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W09-362978 |
| v. | : | |
| | : | LID - 38480 |
| THE INN AT FAIRVIEW, INC. | : | |
| T/A THE FAIRVIEW INN | : | |
| 807 GRANGE RD. | : | |
| LEESPORT, PA 19533-9555 | : | |
| | : | |
| BERKS COUNTY | : | |
| LICENSE NO. R-AP-SS-11657 | : | |

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Roy Harkavy, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
Konrad B. Jarzyna, Esquire
15019 Kutztown Road
Kutztown, PA 19530

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 13, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Inn at Fairview, Inc., t/a The Fairview Inn (Licensee), License Number R-AP-SS-11657.

This citation¹ contains two counts.

The first count charges Licensee with violations of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on October 12 and November 9, 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.

The second count charges Licensee with a violations of Section 471 of the Liquor Code [47 P.S. §4-471]. The charge is that on May 4, June 24, July 8, July 13, August 26, September 14, October 6, 12, November 9 and 25, 2007, Licensee's licensed establishment was operated in a noisy and/or disorderly manner.²

An evidentiary hearing was conducted on September 22, 2008 at the Microtel Inn, 50 Industrial Drive, Hamburg, Pennsylvania.

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 12, 2007 and completed it on December 19, 2007. (Commonwealth Exhibit No. C-1, N.T. 7)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 4, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

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

2. By Order dated April 16, 2008 (mailing date of April 18, 2008), Chief Judge Maunus granted the Bureau's Motion to withdraw the violation date of May 4, 2007, in Count No. 2 of the Citation.

Count Nos. 1 and 2:

3. On October 12, 2007, a Bureau Enforcement Officer entered the premises. After approximately twenty minutes, a live band began to perform using an amplification system. The Officer departed almost immediately after the music began to conduct a sound check. The Officer heard the music emanating from the premises outside. The Officer paced approximately another 150 feet in the same direction to a residence where he again could hear the music emanating from inside the premises. At that distance of about 300 feet, the Officer heard lyrics. The Officer went in another direction approximately 150 feet to another residence. At that location, the Officer heard amplified music coming from inside. At this location he heard the thumping of the bass. (N.T. 9-14)

4. The Officer returned on November 9, 2007, entering at approximately 10:00 p.m. He was in an undercover capacity. At the same locations as the previous visit, the Officer again heard amplified music escaping the premises. (N.T. 14-16)

Count No. 2:

5. A resident who lives approximately 125 feet, measured in a straight line, from the licensed premises was disturbed by the operation of the business on the following dates:

a. **June 24, 2007**

Music emanating from the premises was annoyingly loud. The resident heard the music in his bedroom approximately 11:30 p.m. (N.T. 31-32)

b. **July 8, 2007**

At approximately 11:45 p.m., the resident heard loud music emanating from the premises. He called the local police. There was a response and the level of play of the music was lowered. (N.T. 33-34)

c. **July 13, 2007**

At approximately 11:00 p.m., the resident was disturbed in his home by a live band playing at the licensed premises. (N.T. 38)

d. **August 26, 2007**

At about 1:17 a.m., the resident was disturbed in his home by loud music emanating from the premises. (N.T. 38-39)

e. **September 14, 2007**

The resident was disturbed in his home by loud music. He heard the vocals inside and outside his residence at approximately 11:30 p.m. (N.T. 39-40)

f. **October 12, 2007**

At about 11:22 p.m., there was a loud band performing at the licensed premises. The resident was disturbed by the music emanating from the licensed premises. (N.T. 40-41)

g. **November 25, 2007**

The resident was disturbed by music emanating from the premises while in his home. (N.T. 41-42)

6. Licensee intends to hire a sound engineer to insure any amplified sound does not escape the premises. (N.T. 55-56)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. **Sustained** as to June 24, July 8, 13, August 26, September 14, October 12 and November 9 and 25, 2007.

PRIOR RECORD:

Licensee has been licensed since November 21, 1996, and has had no prior violations.

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 Count Nos. 1 and 2 in this case.

As the disturbances of record amounted to no more than nine dates over a seven month period, I impose:

Count No. 1 - \$200.00 fine.

Count No. 2 - \$200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$400.00 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 10th day of October, 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. 08-0195
THE INN AT FAIRVIEW, INC.