

Mailing Date: NOV 21 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0421
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-365144
v.	:	
	:	LID - 52182
NAUGHTY NUNNY'S, INC.	:	
T/A NAUGHTY NUNNY'S	:	
209 LINDEN AVE.	:	
PO BOX 1539	:	
HANOVER, PA 17331-1539	:	
	:	
ADAMS COUNTY	:	
LICENSE NO. R-AP-17421	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Lauren C. Baer, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 13, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against NAUGHTY NUNNY'S, INC., License Number R-AP-17421 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on December 15, 2007 and January 13, 2008, 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 November 20, 2007 and was completed on February 14, 2008; and notice of the violation was sent to Licensee by Certified Mail on February 20, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 15, 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:

1. On December 15, 2007 at 12:30 a.m., an officer of the Bureau arrived at the licensed premises. From her state vehicle, the officer could hear the sound of a bass beat emanating from the licensed premises (N.T. 8).

2. The officer paced off approximately 70 feet toward the licensed premises, at which time she entered the premises and ascertained that the music was, indeed, coming from within (N.T. 8).

3. The officer observed that a disc jockey was playing music for the entertainment of patrons, and that the music was amplified through loudspeakers (N.T. 8).

4. The officer exited the licensed premises and could hear music emanating from the licensed premises at a distance of 70 feet from the premises at her state vehicle (N.T. 11).

5. On January 13, 2008 at 12:35 a.m. the officer arrived at the licensed premises. Upon exiting her state vehicle, the officer could hear music emanating from the licensed premises. She paced off 140 feet from her vehicle to the front door of the licensed premises (N.T. 11-12).

6. Upon entry, the officer observed a DJ playing music for the entertainment of patrons. The music was amplified through loudspeakers (N.T. 12).

7. At 1:30 a.m. the officer exited the licensed premises and paced off 140 feet from the front of the premises to her state vehicle where she was still able to hear music emanating from the licensed premises (N.T. 12-13).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since November 26, 2003, and has had two prior violations:

Citation No. 05-0263. Fine \$150.00.

1. Used loudspeakers or devices whereby music could be heard outside. December 3, 2004.

Citation No. 05-1645. Fine \$150.00. Fine not paid and license suspended for 1 day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside. April 22, 23 and May 7, 2005.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$350.00.

ORDER

THEREFORE, it is hereby ordered that Licensee NAUGHTY NUNNY'S, INC., pay a fine of \$350.00 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.

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

Dated this 13th day of November, 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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Naughty Nunny's, Inc.