

Mailing Date: SEPT 25 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0556C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-368128
v.	:	
	:	LID - 35667
PIETRO SPORTS HAVEN, INC.	:	
T/A CUPELLI'S PUB & EATERY	:	
429 E. DRINKER ST.	:	
DUNMORE, PA 18512-2484	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-7513	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Brian J. Cali, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 7, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Pietro Sports Haven, Inc., t/a Cupelli's Pub & Eatery (Licensee), License Number R-AP-SS-7513.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Section 404 of the Liquor Code [47 P.S. §4-404]. The charge is that on February 14, 2008, Licensee, by servants, agents or employes, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

1. Commonwealth Exhibit No. C-2, N.T. 8.

The second count 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 February 14, 2008, 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.

The third count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on February 14, 2008, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

An evidentiary hearing was conducted on July 30, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, 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 January 17, 2008 and completed it on February 19, 2008. (N.T. 10)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 26, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count No. 1:

3. The Pennsylvania Liquor Control Board and Licensee entered into a Conditional Licensing Agreement (CLA) (Commonwealth Exhibit No. C-3) which CLA, was in effect on February 14, 2008. (N.T. 20-22)
4. Licensee violated the following paragraphs of the Conditional Licensing Agreement: Paragraph 7b in that the underage buyer was not required to show any proof of age; d. in that Licensee permitted amplified music to escape its premises; e. in that Licensee permitted amplified music to escape its premises.

Count Nos. 1 and 2:

5. A Bureau Enforcement Officer arrived in the area of the premises on February 14, 2008. Prior to entering, the Officer heard amplified music escaping the premises. He entered the premises and determined the music was being provided by a jukebox. The Officer heard the music as far away as 75 feet from the premises. (N.T. 18-19)

6. Licensee employes a remote that controls the volume of the jukebox. The jukebox is set at a certain level. The setting prohibits anyone from using the remote to raise the volume of the jukebox above the level that is set. (N.T. 80-82)

7. No one on the licensed premises has access to a key to change the settings on a jukebox. (N.T. 100-101)

Count Nos. 1 and 3:

8. Pursuant to the Bureau's Age Compliance Check Program, an underage buyer, eighteen years of age, (born November 5, 1988) entered the premises. An undercover Bureau Enforcement Officer entered the premises prior to the minor's entry. The underage buyer approached the bartender. The minor ordered a twelve ounce bottle of beer which he paid for. The minor was not required to produce any proof of age. The minor departed the premises but left his purchase at the licensed premises. (N.T. 11-17; 58; 59-63)

CONCLUSIONS OF LAW:

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

2. Count Nos. 1, 2 and 3 are **sustained** as charged.

DISCUSSION:

I find paragraphs 7., e., f., of the Conditional Licensing Agreement (CLA) to have been violated because Licensee permitted amplified sound to escape its premises. Those violations are therefore repetitive as Licensee was charged with violating the regulation which prohibits amplified sound to escape the licensed premises.

With respect to the violation of selling to a minor, failing to use a transaction scanning device is elevated what is in the Liquor Code is an affirmative defense to an affirmative duty. Thus, Paragraph 7., d. of the CLA was violated.

PRIOR RECORD:

Licensee has been licensed since February 27, 1995, and has had twenty-two prior violations (Commonwealth Exhibit No. C-4, N.T. 65):

Adjudication No. 97-0073. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.
December 20, 1996.

Adjudication No. 97-0700. Fine \$300.00.

Used loudspeakers or devices whereby music could be heard outside.
February 15, 1997.

Adjudication No. 97-1370. Fine \$350.00.

Used loudspeakers or devices whereby music could be heard outside.
May 30 and June 14, 1997.

Adjudication No. 97-2057. Fine \$550.00.

1. Used loudspeakers or devices whereby music could be heard outside.
July 19 and August 16, 1997.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
September 6, 1997.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
September 6, 1997.

Adjudication No. 98-0121. Fine \$350.00.

Used loudspeakers or devices whereby music could be heard outside.
January 3, 1998.

Adjudication No. 98-0283. Fine \$300.00.

Used loudspeakers or devices whereby music could be heard outside.
January 23, 1998.

Adjudication No 98-0579. Fine \$300.00.

Used loudspeakers or devices whereby music could be heard outside.
February 20, 1998.

Adjudication No. 98-1126. Fine \$500.00 and 1 day suspension.
Used loudspeakers or devices whereby music could be heard outside.
April 17 and May 15, 1998.

Adjudication No. 98-1800. Fine \$650.00 and 1 day suspension.
Used loudspeakers or devices whereby music could be heard outside.
August 22, 1998.

Adjudication No. 99-1314. Fine \$3,050.00 and 3 days suspension.

1. Used loudspeakers or devices whereby music could be heard outside.
April 4, 11, 19, May 8 and June 15, 1999.
2. Sales to minors.
May 8 and 9, 1999.
3. Sold alcoholic beverages during a time when Restaurant Liquor License was suspended.
June 15, 1999.
4. Permitted entertainment when your license was suspended by Order of an Administrative Law Judge.
June 15, 1999.
5. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.
June 15, 1999.
6. Permitted lewd, immoral or improper entertainment.
June 15, 1999.
7. Permitted entertainers to contact or associate with patrons for a lewd, immoral, improper or unlawful purpose.
June 15, 1999.

Adjudication No. 99-1965. Fine \$800.00 and 3 days suspension.
Used loudspeakers or devices whereby music could be heard outside.
November 6, 1999.

Adjudication No. 00-0604. Fine \$250.00.
Failed to return your Restaurant Liquor License and Wholesale Liquor Purchase Permit Card to the Board after your licensed establishment had not been in operation for a period of 15 consecutive days.
Between January 10 and February 10, 2001.

Adjudication No. 02-2060. Fine \$750.00.
Used loudspeakers or devices whereby music could be heard outside.
October 30, 2002.

Adjudication No. 03-0562. Fine \$250.00.
Used loudspeakers or devices whereby music could be heard outside.
January 24, 2003.

Adjudication No. 04-0754. Fine \$1,800.00 and 3 days suspension.

1. Sales to minors.
March 20 and April 1, 2004.
2. Minors frequenting.
March 20 and April 1, 2004.

Adjudication No. 05-0528. Fine \$2,000.00 and 2 days suspension.

1. Sales to minors.
February 17, 2005.
2. Minors frequenting.
February 17, 2005.

Adjudication No. 05-1012. Fine \$750.00.
Used loudspeakers or devices whereby music could be heard outside.
April 14, 2005.

Adjudication No. 05-1027. Fine \$150.00.
Issued worthless checks in payment for malt or brewed beverages.
April 1, 2005.

Adjudication No. 05-2031. Fine \$850.00.
Used loudspeakers or devices whereby music could be heard outside.
July 28, September 9 and 10, 2005.

Adjudication No. 05-2191. 2 days suspension.
Notices on your licensed premises indicated that your licensed establishment was closed for a reason other than the suspension of the license.
September 22 and 23, 2005.

Adjudication No. 06-0145. Fine \$3,400.00 and 3 days suspension.

1. Sales to a minor.
December 14, 2005.
2. Used loudspeakers or devices whereby music
could be heard outside.
October 26 and November 9, 2005.

Adjudication No. 07-1958. Fine \$500.00.

Failed to adhere to the conditions of the agreement
entered into with the Board placing additional
restrictions on the license.
July 19 and 21, 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 Count Nos. 1 and 2 and 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 No. 3 in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudications (05-0528 and 06-0145 – Count No. 1), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

Given Licensee's lengthy Adjudication history, I must impose a severe sanction. Licensee has been consistently irresponsible in operating the business. Some might say it is no small wonder that Licensee has yet to have its license taken away either through this adjudicatory process or a refusal to renew.

It does not take a seer to predict Licensee's day of reckoning is close at hand should Licensee continue to violate our laws. I impose:

Count No. 1 - \$500.00 fine and a 5 days suspension.

Count No. 2 - \$300.00 fine.

Count No. 3 – \$1,500.00 fine and 5 days suspension.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,300.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant liquor license (including all permits) of Pietro Sports Haven, Inc., t/a Cupelli's Pub & Eatery, License No. R-AP-SS-7513, be suspended for a period of ten days. However, the suspension period is deferred pending renewal of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the reactivation of the license so an Order may be entered fixing the dates for suspension.

R.A.M.P. Requirements

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 is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued.

However, since the license is in an inactive status so much of this Adjudication as it relates to mandatory compliance with Liquor Code Section 471.1, pertaining to Responsible Alcohol Management, is suspended pending renewal of Licensee's license at which time, I will review the Adjudication for further appropriate action.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 31ST day of August, 2009.



Felix Thau, A.L.J.

pm

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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, Pennsylvania 17110-9661

Citation No. 08-0556C
PIETRO SPORTS HAVEN, INC.