

Mailing Date: NOV 23 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1652
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-369347
v.	:	
	:	LID - 43571
BUBE’S RESTAURANTS, INC.	:	
102 N. MARKET ST.	:	
MOUNT JOY, PA 17552-1306	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. H-AP-SS-77	:	
	:	
	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** Thomas M. Ballaron, Esquire  
**LICENSEE:** Samuel Allen – President/Manager

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 14, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Bube’s Restaurants, Inc. (Licensee), License Number H-AP-SS-77.

This citation<sup>1</sup> contains five 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 February 9, May 25 and June 14, 2008, Licensee, by servants, agents or employes, used, or permitted to be used on the inside/outside 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.

<sup>1</sup> Commonwealth Exhibit No. C-3, N.T. 7.

The second count charges Licensee with a violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(2) and §4-493(16)]. The charge is that on June 14, 2008, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 A.M. and 7:00 A.M.

The third count charges Licensee with a violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(3) and §4-493(16)]. The charge is that on February 24, 2008, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 A.M. and 11:00 A.M.

The fourth count charges Licensee with violations of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on February 24 and June 14, 2008, Licensee, by servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The fifth count charges Licensee with violations of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on February 24 and June 14, 2008, Licensee, by servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 A.M.

An evidentiary hearing was conducted on October 8, 2010 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its President, Mr. S.A.

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 February 8, 2008 and completed it on June 17, 2008. (Commonwealth Exhibit Nos. C-1 and C-2; N.T. 33)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 2, 2008, as amended July 15, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit Nos. C-1 and C-2, N.T. 7)

Count No. 1:

3. On February 9, 2008, at 12:01 a.m., a Bureau Enforcement Officer entered the premises. A band began performing on the stage area. The seven member band sang and played instruments through an amplification system. The music could be heard as far away as 125 feet. (N.T. 10-17)

4. The Officer went to the premises on May 25, 2008, in an undercover capacity, arriving at about 7:15 p.m. He parked his vehicle about 200 feet away from the premises and could hear vocals and instrumentals emanating from the premises. There was an entertainer sitting in an outside area playing a guitar and singing into a microphone which was the source of the music. (N.T. 17-21)

5. In addition to other investigative work, the Officer on June 14, 2008, made a third visit to the premises arriving at approximately 12:43 a.m. He was assisted by a second officer. The Officer heard instrumentals and the bass which was emanating from the premises. The two Officers entered in an undercover capacity and determined the music was being provided by a live band using an amplification system. (N.T. 21-26)

Count Nos. 2, 3, 4 and 5:

6. On June 14, 2008, at 1:40 a.m., the Officers were sitting in a licensed outdoor area. Last call was announced. The Officers were directed to the indoor portion of the licensed premises. At 2:20 a.m., the Officers departed the premises with twelve patrons remaining. The Officers returned at 3:08 a.m. to conduct an outside surveillance. There were about seven cars in the parking lot. At approximately 3:45 a.m., a man exited the premises, walked to a vehicle, opened up the trunk, closed it and returned to the premises. At 3:50 a.m., an Officer approached the door from which the man previously exited and returned. The Officer put his ear to the door. He heard voices inside the premises along with glasses banging. The door was unlocked. Both Officers entered the premises at 3:50 a.m. There were six people inside. There were several employees, a patron, and several band members present. When the Officer entered, he saw one of the employees pouring a glass of beer from a tap. (N.T. 26-30)

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 charged.

Count No. 3:

4. The Bureau **failed** to prove that Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday, February 24, 2008, between 2:00 A.M. and 11:00 A.M.

Count No. 4:

5. Licensee, by servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, on June 14, 2008.

Count No. 5:

6. Licensee, by servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 A.M., on June 14, 2008.

DISCUSSION:

I dismiss the violations on February 24, 2008, because they are based on inadmissible hearsay. The Bureau contends the individual uttering those declarations was an employe. The first time he made declarations was immediately after an automobile accident, at a time when he was intoxicated. Certainly, the declarant was not driving in the course of his employment.

Weeks later, the declarant repeated his statements to the local police officer but there was no proof that those statements were made in furtherance of the employment relationship. The critical question is not whether the behavior occurred during an employment relationship but whether the declaration was made as an employe. Moreover, I cannot use the statement that I am an employe to transform that which is inadmissible to admissible as the statement: "I am an employe," is hearsay in and of itself.

I also cannot consider those statements as declarations against penal interest. It is true that every violation of Article 4 of the Liquor Code is a crime, but the Bureau must also establish that the declarant is unavailable. The record is virtually devoid of any evidence supporting a conclusion that the declarant is unavailable.

PRIOR RECORD:

Licensee has been licensed since June 10, 1999, and has had five prior violations:

Adjudication No. 01-0137. Fine \$300.00.

1. Noisy and/or disorderly operation.  
September 12, 21, 22, October 27, 28 and 29, 2000.
2. Used loudspeakers or devices whereby music could be heard outside.  
September 22, October 27, 28 and 29, 2000.

Adjudication No. 01-0928. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.  
April 1, 2001.

Adjudication No. 03-0581. Fine \$4,000.00.

1. Used loudspeakers or devices whereby music could be heard outside.  
June 19, 22, Jul 24, 26, August 25, 31 and September 1, 2002.
2. Noisy and/or disorderly operation.  
On 14 dates between June 19 and September 14, 2002.
3. Permitted lewd, immoral or improper entertainment.  
April 26, 2002.
4. Permitted an employe to contact or associate with patrons for a lewd, immoral, improper or unlawful purpose.  
April 26, 2002.
5. Permitted entertainers to contact or associate with patrons.  
April 26, 2002.

Adjudication No. 04-2319. Fine \$500.00.

Used loudspeakers or devices whereby music could be heard outside.  
November 13, 2004.

Adjudication No. 09-0948. Fine \$500.00.

Used loudspeakers or devices whereby music could be heard outside.  
October 24, 2008, January 2, 30 and February 13, 2009.

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, 4 and 5 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. 2 in this case.

Licensee explains all the violations described in Count Nos. 2 through 5 occurred at a time when he entrusted the operation of his business to people who essentially were rogue employees. The events in this matter predate an earlier Adjudication because it was held in abeyance pending return of the investigating officer from military duty in a war zone. Recognizing the corrective impact is therefore marginal, I impose:

Count No. 1 - \$500.00 fine.  
Count Nos. 2, 4 and 5 – merged - \$1,500.00.  
Count No. 3 – dismissed.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,000.00 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.

**Dismissal of Count No. 3:**

IT IS FURTHER ORDERED that Count No. 3 of Citation No. 08-1652, issued against Bube's Restaurants, Inc., is DISMISSED.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 29<sup>TH</sup> day of October, 2010.



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

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The fine must be paid by cashier's check, certified check or money order. **Personal and business checks, are not acceptable unless bank certified.** 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. 08-1652  
BUBE'S RESTAURANTS, INC.