

Mailing Date: MAR 16 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1996
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-374207
v.	:	
	:	LID - 55964
MOUNTAIN TOP ASSOCIATES, INC.	:	
T/A DENVER HOUSE	:	
240 MAIN ST.	:	
DENVER, PA 17517-1614	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. H-AP-SS-2149	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Frank C. Sluzis, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 11, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MOUNTAIN TOP ASSOCIATES, INC., License Number H-AP-SS-2149 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 467 of the Liquor Code [47 P.S. §4-467] in that on May 24, 2008, Licensee, by its servants, agents or employes, failed to constantly and conspicuously expose Hotel Liquor license under a transparent substance on the licensed premises.

The second count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on May 24, 2008, Licensee, by its servants, agents or employes, 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 May 9, 2008 and was completed on July 11, 2008; and notice of the violation was sent to Licensee by Certified Mail on August 8, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 2, 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:

COUNTS 1 AND 2

1. On May 23, 2008 at 11:55 p.m., an officer of the Bureau entered the licensed premises (N.T. 7).
2. The officer took a seat at the bar and noticed that the liquor license for the establishment was displayed behind glass. He further noticed that the actual license was covered up by two pieces of paper which were also behind the glass (N.T. 7-8).
3. The pieces of paper covering up the liquor license comprised a letter of temporary authority granted by the Pennsylvania Liquor Control Board to dispense alcohol on the licensed premises (N.T. 18 and Exhibit L-1).
4. While the officer was on licensed premises, he noticed that music was being played (N.T. 8).
5. The officer observed that on top of the jukebox was a portable radio with speakers on it often referred to as a "boom box." On top of this radio was an "MP3" player which was plugged in to the radio. The music being played was emanating from the radio which had the MP3 player plugged into it (N.T. 8).
6. The officer asked the bartender about the radio and MP3 player. The bartender stated that the device had been operating and that it belonged to a patron (N.T. 9-10).

7. The officer left the licensed premises at 12:05 a.m., now May 24, 2008. He paced off distances from the licensed premises and could hear music emanating from within the premises at distances up to 54 feet (N.T. 10).

CONCLUSIONS OF LAW:

Count 1 of the citation is **dismissed**.

Count 2 of the citation is **sustained**.

DISCUSSION:

COUNT 1

In this instance, the evidence shows that Licensee was in compliance with Section 467 of the Liquor Code [47 P.S. §4-467] in that the temporary authority under which the Licensee was operating which, in effect, was the liquor license for the licensed premises was properly displayed under a transparent substance on the licensed premises. Consequently, no violation occurred and Count 1 of the citation will be dismissed.

COUNT 2

The record clearly establishes that music produced on the licensed premises was amplified over loudspeakers and could be heard outside the licensed premises. Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] not only prohibits the use of loudspeakers by Licensee, but also prohibits the permitting of others to use loudspeakers whereby the sound of music produced can be heard outside the licensed premises. Since, in this case Licensee permitted a patron to use loudspeakers to produce music which was heard outside the licensed premises a violation has occurred.

PRIOR RECORD:

Licensee has been licensed since March 9, 2006, and has had two prior violations:

Citation No. 07-1277. Fine \$2,500.00.

1. Used loudspeakers or devices whereby music could be heard outside. January 22, 24, February 9, 16, 17 and April 13, 2007.
2. Sales to visibly intoxicated persons. December 1, 2006.
3. Operated the licensed establishment without a valid health permit or license. February 8 through April 19, 2007.

Citation No. 07-2781C. Fine \$1,750.00.

1. Sales to a minor. October 10, 2007.
2. Used loudspeakers or devices whereby music could be heard outside. September 22 and October 5, 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.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - dismissed
Count 2 - \$350.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee MOUNTAIN TOP ASSOCIATES, 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 27TH day of February, 2009.



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

Citation No. 08-1996
Mountain Top Associates, Inc.