

Mailing Date: MAR 10 2009

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

|                            |   |                         |
|----------------------------|---|-------------------------|
| PENNSYLVANIA STATE         | : |                         |
| POLICE, BUREAU OF          | : | Citation No. 08-2411    |
| LIQUOR CONTROL ENFORCEMENT | : |                         |
|                            | : | Incident No. W02-379313 |
| v.                         | : |                         |
|                            | : | LID – 51008             |
| NAK’S BY THE TRACKS, INC.  | : |                         |
| T/A NAK’S BY THE TRACKS    | : |                         |
| 136 PENN AVE.              | : |                         |
| EXETER, PA 18643-1921      | : |                         |
|                            | : |                         |
| LUZERNE COUNTY             | : |                         |
| LICENSE NO. R-AP-11397     | : |                         |

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Craig A. Strong, Esquire  
Pennsylvania State Police  
7448 Industrial Parkway  
Macungie, PA 18062

For Licensee  
Chris Kraynak  
Sole Corporate Officer  
and Manager

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 17, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Nak’s By The Tracks, Inc., t/a Nak’s By the Tracks (Licensee), License Number R-AP-11397.

This citation<sup>1</sup> contains two counts.

The first 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 September 6, 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 second 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 September 6, 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) visibly intoxicated male patron.

An evidentiary hearing was conducted on February 5, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Sole Corporate Officer and Manager, Mr. Chris Kraynak.

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 August 11, 2008 and completed it on September 6, 2008. (N.T. 22)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on September 23, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-4)

Count Nos. 1 and 2:

3. A Bureau Enforcement Officer made a second visit during an investigation of the premises on September 6, 2008, arriving at approximately 11:30 p.m. As soon as he exited his vehicle which was parked on the street, he heard music coming from the premises. He heard the music as far away as 180 feet and later determined the source of the music was a jukebox. (N.T. 29-31)

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1. Commonwealth Exhibit No. C-2, 08-2411, N.T. 12.

4. While in the premises in an undercover capacity, the Officer observed a patron who appeared to be visibly intoxicated. As the Officer entered, the customer was trying to dance. The customer was screaming: "heehaw," which drew many of the customers' attention to him. His attempt at dancing was uncoordinated and unsteady. He bumped into the Officer at one point and attempted to apologize. His speech was very slow. The customer said to the Officer that he was: "loaded tonight." (N.T. 32-35)

5. The customer also remarked: "Don't worry about it. I am not driving tonight. I am loaded. I got a ride." At 12:40 a.m., on the date charged, the patron was served an alcoholic beverage. (N.T. 36-38)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since March 7, 2003, and has had five prior violations (Commonwealth Exhibit No. C-3, N.T. 20):

Adjudication No. 03-1187. Fine \$300.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
June 15, 2003.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 A.M.  
June 15, 2003.

Adjudication No. 07-0325. Fine \$150.00.

Issued worthless checks in payment for purchases of malt or brewed beverages.  
December 29, 2006.

Adjudication No. 07-2140. Fine \$200.00.

Issued worthless checks in payment for purchases of malt or brewed beverages.  
June 22, 2007.

Adjudication No. 07-2376. 3 days suspension.  
Sales after your license expired and had not been  
renewed and/or validated.  
September 1, 2007.

Adjudication No. 07-3102X. Fine \$210.00. Fine not paid  
and license suspended for 1 day and continuing thereafter  
until fine paid.  
Issued worthless checks in payment for  
purchases of malt or brewed beverages.  
October 26, 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 No. 1 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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

I impose:

Count No. 1 - \$150.00 fine.  
Count No. 2 – 4 days suspension.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$150.00 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 Nak's By The Tracks, Inc., t/a Nak's By The Tracks, License No. R-AP-11397, be suspended for a period of four days, **BEGINNING** at 7:00 a.m., on Monday, April 20, 2009, and **ENDING** at 7:00 a.m., on Friday, April 24, 2009.

Licensee is directed, on Monday, April 20, 2009, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Friday, April 24, 2009, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

### **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](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto: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.

### **Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 6th day of March, 2009.



Felix Thau, A.L.J.

Detach Here and Return Stub with Payment

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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. 08-2411  
NAK'S BY THE TRACKS, INC.