

Mailing Date: MAY 5 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2846
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-372978
v.	:	
	:	LID - 57466
TIMOTHY K. TINDALE	:	
1239 MARKET ST.	:	
HARRISBURG, PA 17103-2229	:	
	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-EHF-18685	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Thomas M. Ballaron, Esquire  
Pennsylvania State Police  
3655 Vartan Way  
Harrisburg, PA 17110

For Licensee  
Lawrence J. Rosen, Esquire  
1101 North Front Street  
Harrisburg, PA 17110

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on December 4, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Timothy K. Tindale (Licensee), License Number R-AP-SS-EHF-18685.

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

The first count charges Licensee with violations of Section 404 of the Liquor Code [47 P.S. §4-404]. The charge is that from April 5 through September 15, 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.

The second 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 April 5 and September 26, 2008, Licensee, by servants, agents or employes, used, or permitted to be used on the inside of his 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 violations of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on May 1 and 27, 2008, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

The fourth count charges Licensee with violations of Section 492(8) of the Liquor Code [47 P.S. §4-492(8)]. The charge is that on September 30, 2008, and divers occasions within the past year, Licensee, by servants, agents or employes, transported malt or brewed beverages without a license.

An evidentiary hearing was conducted on April 1, 2009 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 April 5, 2008 and completed it on October 29, 2008. (Commonwealth Exhibit No. C-1, N.T. 8)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 24, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

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

Count No. 1:

3. Licensee and the Pennsylvania Liquor Control Board entered into a Conditional Licensing Agreement (CLA) which was in effect at all relevant times. The pertinent provisions are: Paragraph 6(c) which requires that Licensee shall install and utilize a transaction scan device, ... to scan identification of all patrons entering the premises; Paragraph 6(f) which requires of Licensee to maintain regularly monthly contact with local police and maintain records reflecting the date and substance of that contact; Paragraph 6(h) which requires of Licensee to maintain camera surveillance in the area immediately outside the entrance of the property as well as inside the licensed premises. (N.T. 23-29, Commonwealth Exhibit No. C-3)

4. While Licensee did maintain regular monthly contact by way of talking to local police officers on duty, Licensee did not complete records of those contacts. (N.T. 33-34)

5. For six weeks, beginning April 5, 2008 and continuing until May 17, 2008, Licensee did not have a transaction scan device. (N.T. 42-43)

6. During the period May 1, 2008 through May 27, 2008, Licensee did not maintain a camera surveillance inside of the premises because some of the attendant's equipment could not record data for 90 days as required by the Conditional Licensing Agreement. (N.T. 62-87)

Count No. 2:

7. On April 5, 2008, at 12:50 a.m., Bureau Enforcement Officers arrived at the licensed premises. They heard amplified music escaping the premises as far away as 75 feet. On September 26, 2008, Bureau Enforcement Officers heard amplified music escaping the premises as far away as 75 feet. In both situations, the doors to the premises were closed. (N.T. 15-17)

Count No. 3:

8. On the dates charged, Bureau Enforcement Officers spoke to Licensee who admitted there were no records on the licensed premises. Licensee indicated the records were with his accountant. (N.T. 18-19)

Count No. 4:

9. On September 30, 2008, Licensee purchased beer at a Distributor and transported the purchased beer to the licensed premises in his vehicle. (N.T. 21-22)

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 to April 5, 2008 to May 17, 2008, with respect to Paragraph 6(c).
3. **Sustained** as charged with respect to Paragraph 6(f).
4. **Sustained** as to May 1, 2008 through May 27, 2008, with respect to Paragraph 6(h)

Count No. 2:

5. **Sustained** as charged.

Count No. 3:

6. **Sustained** as charged.

Count No. 4:

7. **Sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since April 4, 2007, and has had no prior violations:

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, 2, 3 and 4 in this case.

Licensee seems to have bit off more than he can chew for the present time. I believe Licensee is sincere in the sense that he is trying but trying is not enough. I trust Licensee has gotten a clearer picture of what the requirements are. Licensee has assured me he now has a total grip on what he needs to do. Time will tell.

I impose:

Count No. 1 – \$1,000.00 fine.  
Count No. 2 – \$150.00 fine.  
Count No. 3 – \$150.00 fine.  
Count No. 4 – \$50.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,350.00 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.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 27th day of April, 2009.



Felix Thau, A.L.J.

pm

**MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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 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, PA 17110-9661

Citation No. 08-2846  
TIMOTHY K. TINDALE