

Mailing Date: SEPT 21 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0381
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-386065
v.	:	
	:	LID - 54264
SILVIO & JEFF, INC.	:	
T/A THE ICE HOUSE PUB	:	
2658 NUANGOLA RD.	:	
MOUNTAIN TOP, PA 18707-9570	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-17256	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Jeffrey Kaminski – President/Stockholder

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 27, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Silvio & Jeff, Inc., t/a The Ice House Pub (Licensee), License Number R-AP-SS-17256.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Sections 104(c), 401(a) and 406(a)(1) of the Liquor Code [47 P.S. §1-104(c), §4-401(a) and §4-406(a)(1)]. The charge is that on January 31, 2009, Licensee, by servants, agents or employes, offered and/or gave liquor and/or malt or brewed beverages as a prize.

1. Commonwealth Exhibit No. C-2, N.T. 14.

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 January 31, 2009, Licensee, by servants, agents or employees, 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.

An evidentiary hearing was conducted on July 30, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its President/Stockholder, Mr. Jeffrey Kaminski. I advised Mr. K. of Licensee's right to counsel, to cross-examine witnesses and to present testimony. Mr. K. acknowledged that he understood those rights and that he was prepared to go forward without an attorney. (N.T. 9)

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 December 16, 2008 and completed it on January 31, 2009. (N.T. 11-12)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on February 13, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 13)

Count No. 1:

3. While in an undercover capacity at the licensed premises on January 31, 2009, a Bureau Enforcement Officer observed the licensed premises was being used for a fundraiser.²

2. I have consistently maintained that licensees who permit others to rent the licensed facility for purposes of fundraising may be violating the provision against unlawful pecuniary interest, because the licensee is permitting another to profit from its license. Furthermore, the Legislature has defined those organizations which are permitted to make a profit from a liquor license for charitable purposes through the Special Occasion Permit. Therefore, one can readily conclude those organizations not listed were not intended, by our Legislature to profit from a liquor license.

4. Licensee permitted another organization to operate a fundraiser in which liquor was a prize. (N.T. 18-21)

Count No. 2:

5. Prior to entering the licensed premises, the Officer parked his car in the area of the premises. At approximately 10:00 p.m., on January 31, 2009, the Officer was able to hear music emanating from the premises as far away as 250 feet. After entry, the Officer determined the music was being provided by an entertainer using an acoustic guitar. His voice and the guitar were electronically amplified. (N.T. 15-18)

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 2, 2005, and has had three prior violations (Commonwealth Exhibit No. C-3, N.T. 32):

Adjudication No. 06-3004. Fine \$250.00.

Discounted the price of alcoholic beverages for a period or periods in excess of 2 hours in a business day.

November 5 and December 3, 2006.

Adjudication No. 08-1012. Fine \$250.00.

Used loudspeakers or devices whereby music could be heard outside.

April 5, 2008.

Adjudication No. 08-1973. Fine \$350.00.

Used loudspeakers or devices whereby music could be heard outside.

July 11, 2008.

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 in this case.

I impose:

Count No. 1 - \$75.00 fine.
Count No. 2 - \$375.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$450.00 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 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, PA 17110-9661

Citation No. 09-0381
SILVIO & JEFF, INC.