

Mailing Date: FEB 25 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0510
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-389280
v.	:	
	:	LID - 49999
TULLY, INC.	:	
T/A BOTTLENECKS	:	
2 S. BROAD ST.	:	
WEST HAZLETON, PA 18201-3816	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-15248	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: JASON MISTO, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 13, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against TULLY, INC., License Number R-AP-SS-EHF-15248 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on February 13, 2009, Licensee, by its servants, agents or employes, used, or 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 February 12, 2009 and was completed on February 14, 2009; and notice of the violation was sent to Licensee by Certified Mail on February 24, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 23, 2009 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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:

1. On February 13, 2009 at 11:45 p.m., two officers of the Bureau arrived at the licensed premises and parked. Upon arrival, the officers could hear music emanating from the licensed premises (N.T. 10).

2. One of the officers conducted a sound check and could hear music emanating from the licensed premises at distances up to 100 feet (N.T. 10).

3. The officers entered the licensed premises and determined that the source of the music was a Touch Tunes jukebox, the music from which is electronically amplified through loudspeakers (N.T. 11).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since November 13, 2002, and has had four prior violations:

Citation No. 03-2140. Fine \$400.00.

1. Used loudspeakers or devices whereby music could be heard outside. October 22, November 14 and December 14, 2003.

Citation No. 04-2204. Fine \$650.00.

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

Citation No. 06-1056C. Fine \$2,000.00 and RAMP training mandated.

1. Sales to a minor. March 24, 2006.
2. Used loudspeakers or devices whereby music could be heard outside. February 24, 2006.

Citation No. 08-0391. Fine \$800.00.

1. Used loudspeakers or devices whereby music could be heard outside. January 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 this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,000.00 and suspension of license for a period of two days.

ORDER

THEREFORE, it is hereby ordered that Licensee TULLY, INC., pay a fine of \$1,000.00 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.

IT IS FURTHER ORDERED that Licensee's liquor license (including all permits) License No. R-AP-SS-EHF-15248 be suspended for a period of two days **BEGINNING** at 7:00 a.m. on Monday, April 5, 2010 and **ENDING** at 7:00 a.m. on Wednesday, April 7, 2010.

Licensee is directed on April 5, 2010 at 7:00 a.m. to place the enclosed 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 April 7, 2010 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 19TH day of January, 2010.



Daniel T. Flaherty, Jr., J.

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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 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. 09-0510
Tully, Inc.