

Mailing Date: AUAG 14 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0574
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-384586
v.	:	
	:	LID - 14723
FRANK L STAUB TAVERN INC	:	
2760-62 E PACIFIC ST	:	
PHILADELPHIA PA 19134-5533	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-11080	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE: no appearance.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 17, 2009. There are two counts in the citation.

The first count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on December 6, 2008, January 15 and February 13, 2009, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §637.6(a)(2) of the Clean Indoor Air Act, 35 P.S. §637.6(a)(2), on January 22, 28, 30 and February 13, 2009, by permitting smoking in a public place where smoking is prohibited.

At the hearing scheduled for June 30, 2009, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the matter was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period November 14, 2008, through February 18, 2009, and sent written notice of the results of its investigation to the licensed premises by certified mail on March 3, 2009 (N.T. 14-15, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on March 17, 2009 (N.T. 15-16, Exhibit B-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on May 13, 2009.

4. On December 6, 2008, a liquor enforcement officer heard music emanating from the licensed premises at a distance of 150 feet. He entered the premises and found that the music was coming from loudspeakers inside being used by a four piece band (N.T. 4-6).

5. On January 15, 2009, the officer heard music emanating from the licensed premises at a distance of 75 feet. He entered the premises and found that the music was coming from loudspeakers inside being used by a disk jockey (N.T. 7).

6. On January 22, 2009, the officer entered the premises and saw that patrons were smoking. There were aluminum foil ash trays around the bar which employees would empty when needed. "No smoking" signs were posted (N.T. 7-8).

7. On January 28, 2009, the officer entered the premises and saw that patrons were smoking. There were aluminum foil ash trays around the bar which employees would empty when needed. "No smoking" signs were posted (N.T. 11).

8. On January 30, 2009, the officer entered the premises and saw that patrons were smoking. There were aluminum foil ash trays around the bar which employees would empty when needed. "No smoking" signs were posted (N.T. 9).

9. On February 13, 2009, the officer heard music emanating from the licensed premises at a distance of 100 feet. He entered the premises and found that the music was coming from loudspeakers inside being used by a six piece band. Patrons were smoking. There were aluminum foil ash trays around the bar which employees would empty when needed. "No smoking" signs were posted (N.T. 12-13).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since January 11, 1980, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 97-0635. \$600.00 fine.

1. Loudspeakers could be heard outside.
2. Gambling.

Citation No. 97-2495. \$200.00 fine.

1. Loudspeakers could be heard outside.

Citation No. 04-1232. \$500.00 fine.

1. Loudspeakers could be heard outside on 14 dates between March 13 and June 4, 2004.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

Penalties are assessed as follows:

- Count 1 – a fine of \$600.00.
- Count 2 – a fine of \$300.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Frank L. Staub Tavern, Inc., License No. R-AP-SS-11080, shall pay a fine of nine hundred dollars (\$900.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 5TH day of AUGUST, 2009.



David L. Shenkle, J.

jb

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