

Mailing Date: MAR 05 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1102
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-390279
v.	:	
	:	LID - 17050
JAM CLUB, INC.	:	
T/A TOMAINO'S RESTAURANT	:	
273 S. MAIN ST.	:	
ARCHBALD, PA 18403-1944	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-14961	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL STRONG  
LICENSEE: NICHOLAS E. FICK, ESQUIRE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on May 13, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against JAM CLUB, INC., License Number R-AP-SS-14961 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)] in that on March 28 and April 25, 2009, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(1) of the Clean Indoor Air Act [35 P.S. §637.6(a)(1)] in that on March 28 and April 25, 2009, Licensee, by its servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act.

The third count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on March 28, 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 March 4, 2009 and was completed on April 27, 2009; and notice of the violation was sent to Licensee by Certified Mail on April 27, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 21, 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:

COUNTS 1, 2 AND 3

1. On March 27, 2009, an officer of the Bureau arrived at the licensed premises at 11:50 p.m. (N.T. 13).
2. When the officer first arrived, there was no music emanating from the licensed premises. He heard some patrons leaving the licensed premises say that the band was on break. He sat in his car and did surveillance, and at approximately 12:15 a.m., now March 28, 2009 he heard loud music emanating from the licensed premises (N.T. 14-15).
3. The officer conducted a sound check and could hear music emanating from the licensed premises at distances up to 210 feet (N.T. 15-16).
4. The officer entered the licensed premises where he observed that the music he heard outside was being produced by a rock band called Kartune. The music played by the band was amplified through loudspeakers (N.T. 16).
5. While he was in the licensed premises, the officer observed ashtrays on the bar and numerous patrons smoking. When he had entered he observed no Clean Indoor Air Act signage on the door saying smoking was permitted, and nothing inside the licensed premises saying that smoking was not permitted (N.T. 16-17).
6. The officer left the licensed premises at 1:10 a.m. He was again able to hear music emanating from the licensed premises at the same distances he had heard prior to entering (N.T. 17).

7. On April 25, 2009, an officer of the Bureau arrived at the licensed premises at approximately 9:45 p.m. (N.T. 6).

8. Upon entering the licensed premises the officer noted that there was no signage posted outside which made reference to smoking, whether permitted or not (N.T. 7).

9. Upon entry the officer observed there was a male bartender on duty (N.T. 7).

10. While on the licensed premises the officer observed at least 15 ashtrays on the bar counter. He further observed that of the six patrons that were on the premises, three were continually smoking cigarettes (N.T. 7).

11. The officer found no signage inside the premises which made reference to whether smoking was permitted or not (N.T. 7).

12. Licensee did not have a smoking exception for the licensed premises until June 25, 2009 (N.T. Exhibit C-3).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since December 13, 1977, and has had one prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 97-1402. Fine \$1,050.00.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Sales to minors.

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.

Counts 1 and 2 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be as follows:

Counts 1 and 2 merged - \$200.00 fine  
Count 3 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee JAM CLUB, INC., 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.

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

Dated this 17<sup>TH</sup> day of February, 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**

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make 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. 09-1102  
Jam Club, Inc.

