

Mailing Date: JAN 22 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1548
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-394657
v.	:	
	:	LID - 10719
COAL CRACKER TAVERN, INC.	:	
T/A COAL CRACKER TAVERN	:	
561-563-565 ALTER ST.	:	
HAZLETON, PA 18201	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-SS-2901	:	
	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** Craig A. Strong, Esquire  
**LICENSEE:** Carol Sheman - President

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on July 1, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Coal Cracker Tavern, Inc., t/a Coal Cracker Tavern (Licensee), License Number R-SS-2901.

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

The first 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 May 23 and June 7, 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.

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1. Commonwealth Exhibit No. C-2, N.T. 12.

The second count charges Licensee with a 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)]. The charge is that on June 7, 2009, Licensee, by servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The third count charges Licensee with a 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)]. The charge is that on June 7, 2009, Licensee, by servants, agents or employes, failed to post signage as required by the Clean Indoor air Act.

An evidentiary hearing was conducted on December 10, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Sole Corporate Officer, Ms. C.S.. I advised Ms. C.S. of Licensee's right to counsel, to cross-examine witnesses and to present testimony. Ms. C.S. acknowledged that she understood those rights and that she was prepared to go forward without an attorney. (N.T. 5-6)

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 May 22, 2009 and completed it on June 8, 2009. (N.T. 12-13)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 16, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 11)

Count No. 1:

3. On May 23, 2009, a Bureau Enforcement Officer arrived in the area of the premises at 12:35 a.m. He heard music emanating from the premises. The front door of the licensed premises was open. He heard the music as far away as 140 feet north and 100 feet south. The Officer entered the premises at 12:40 a.m., discovering the music he heard outside was being provided by a jukebox through electronic amplification. The Officer departed at 12:55 a.m., and again could hear the music emanating from the premises. (N.T. 13-16)

4. The Officer returned to the area of the premises on June 7, 2009 at 12:05 a.m. He again heard amplified music escaping the premises as far away as 130 feet both north and south of the premises. The Officer entered at 12:10 a.m., and confirmed the music was being provided by a jukebox using electronic amplification. (N.T. 17-18)

5. As a result of the loudspeaker difficulties, Licensee called the vending company to have the speakers relocated. The vendor also disconnected the bass. (N.T. 24-25)

Count Nos. 2 and 3:

6. During the Officer's visit of June 7, 2009, there were customers smoking in the bar area of the premises. Licensee maintained a sign indicating that smoking was permitted. (N.T. 17-18)

7. Licensee did not have an exemption to permit smoking on its premises pursuant to the Clean Indoor Air Act. (Commonwealth Exhibit No. C-4)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since November 2, 1987, and has had two prior violations (Commonwealth Exhibit No. C-3, N.T. 12):

Adjudication No. 02-0312. Fine \$250.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 A.M.

Adjudication No. 08-1649C. Fine \$1,000.00 and R.A.M.P. Training mandated.

Sales to a minor.  
June 19, 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, 2 and 3 in this case.

Licensee is in the process of filing for an exemption. Accordingly, I will adopt the recommended penalty as follows:

Count No. 1 – 1 day suspension.  
Count Nos. 2 and 3 – merged – 1 day suspension.

ORDER:

**Imposition of Suspension**

THEREFORE, it is hereby ordered that the Restaurant liquor license (including all permits) of Coal Cracker Tavern, Inc., t/a Coal Cracker Tavern, License No. R-SS-2901, be suspended for a period of two days, **BEGINNING** at 7:00 a.m., on Monday, March 8, 2010, and **ENDING** at 7:00 a.m., on Wednesday, March 10, 2010.

Licensee is directed on Monday, March 8, 2010, at 7:00 a.m., to place a 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 Wednesday, March 10, 2010, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 8<sup>TH</sup> day of January, 2010.



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.**