

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. 09-1916
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-388130
v.	:	
	:	LID - 59703
YOUNGSTOWN HOTEL OF	:	
STANBAUGH LLC	:	
T/A YOUNGSTOWN HOTEL	:	
320 MAPLE STREET	:	
LEMONT FURNACE PA 15456-1041	:	
	:	
	:	
FAYETTE COUNTY	:	
LICENSE NO. H-AP-SS-3201	:	

BEFORE: JUDGE FRISK

APPEARANCES:

BLCE COUNSEL: Emily Gustave, Esquire

LICENSEE COUNSEL: No appearance.

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 12, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Youngstown Hotel of Stanbaugh, LLC, t/a Youngstown Hotel, License Number H-AP-SS-3201 (hereinafter Licensee).

YOUNGSTOWN HOTEL OF
STANBAUGH, LLC
Citation Number 09-1916

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 7, March 6, 20 and April 19, 2009, Licensee, by its 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 administrative hearing was conducted on January 19, 2010, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on January 27, 2009, and completed its investigation on July 14, 2009. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated July 30, 2009, which was sent by certified mail and received by Licensee on August 3, 2009. (Exhibit C-2)
3. The citation was issued on August 12, 2009, and was sent by certified mail and received by Licensee on August 20, 2009. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on December 3, 2009 by certified mail as well as first class mail.
5. The aforementioned certified mailing of the notice of hearing was received by Licensee.

COUNT 1

6. Licensee's premises is located in a community which is predominantly residential. (N.T. 20)

7. On Saturday, February 7, 2009 at 9:45 p.m., a Liquor Enforcement officer parked his vehicle approximately 50 feet outside of Licensee's premises at which time amplified music was heard emanating from the premises. The Enforcement officer entered Licensee's premises in an undercover capacity and observed two female bartenders rendering service of alcoholic beverages to 35 to 40 patrons. Entertainment was being provided through an amplified sound system by a band referred to as "Dave Inglar" which consisted of two guitarists, a saxophonist and a drummer. At 10:30 p.m., the Enforcement officer exited the premises and conducted an outside surveillance, turned right while exiting the front door and walked approximately 200 feet at which distance the sound of the amplified music was audible including vocals and percussion. The Enforcement officer then returned to his vehicle and proceeded approximately 300 feet on Poplar Street where the sound of this amplified music continued to be heard. (N.T. 11-18)

8. On Friday, March 6, 2009 at 9:50 p.m., the Enforcement officer entered Licensee's premises in an undercover capacity and observed two female bartenders rendering service of alcoholic beverages to 14 patrons. Entertainment was being provided by a disc jockey referred to as "Music Man" through an amplified sound system set up on the premises. At 10:15 p.m., the Enforcement officer exited the premises and proceeded along an alleyway approximately 150 feet past three residences where he was able to clearly hear the sound of the amplified music emanating from within the premises. The Enforcement officer then proceeded along Poplar Street at a distance of approximately 250 feet from the premises past several homes at which distance he heard bass sounds emanating from the premises. (N.T. 18-20)

9. On Friday, March 20, 2009 at 10:30 p.m., the Enforcement officer returned to Licensee's premises and heard the sound of amplified music emanating from within the premises while parking his vehicle. Upon entering in an undercover capacity, the Enforcement officer observed two female bartenders rendering service of alcoholic beverages to 15 patrons. Entertainment was being provided through an amplified sound system set up on the premises by two female disc jockeys referred to as "Jade." At 11:00 p.m., the Enforcement officer conducted an outside surveillance of Licensee's premises and proceeded down the alleyway in front of Licensee's premises to a distance of 200 feet past three residences where the sound of the amplified music emanating from within Licensee's premises was clearly heard. (N.T. 21-23)

10. On Saturday, April 18, 2009 at 11:30 p.m. the Enforcement officer entered Licensee's premises in an undercover capacity and observed two female bartenders rendering service of alcoholic beverages to 18 patrons. On this occasion, entertainment was being provided by a live band referred to as "The Cellar Dwellers" consisting of a vocalist, three guitarists and a drummer were providing entertainment through an amplified sound system set up on the premises. Shortly after midnight then being April 19, 2009, the Enforcement officer departed Licensee's premises, entered his vehicle, and proceeded down the alleyway in front of the premises. At a distance of approximately 100 feet, the Enforcement officer heard the sound of this amplified music while in his vehicle over the car engine. At 200 feet, the percussion sounds continued to be audible with the car engine turned off. The sound of this music continued to be heard along Poplar Street at a distance of approximately 300 feet from the premises. (N.T. 23-25)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On February 7, March 6, 20 and April 19, 2009, Licensee, by its 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PRIOR RECORD:

Licensee has been licensed since July 1, 2008, and has had one prior violation to wit:

Citation No. 09-0275. Fine \$300.00.

1. Used loudspeakers or devices whereby music could be heard outside.
December 19, 2008 and January 10, 2009.

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.

The record discloses that Licensee has had a prior violation of the type herein enumerated and shall therefore be treated as a repeat offender. Moreover, this court shall further take into consideration that this citation involves four incidences of amplified music emanating into the surrounding community.

For the foregoing reasons, a penalty shall be imposed in the amount of \$800.00.

YOUNGSTOWN HOTEL OF
STANBAUGH, LLC
Citation Number 09-1916

ORDER:

THEREFORE, it is hereby ordered that Youngstown Hotel of Stanbaugh, LLC, t/a Youngstown Hotel, License Number H-AP-SS-3201, pay a fine of \$800.00 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 to ensure compliance with this Order.

Dated this 12TH day of February, 2010.



Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

Detach Here and Return Stub with Payment

The fine must be paid by cashier's check, certified check or money order. Personal and business checks are not acceptable unless bank certified. 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

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Youngstown Hotel of
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