

Mailing Date: APR 14 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2467
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-396638
	:	
VICKI'S PLACE INC	:	
901 MONROE AVE REAR	:	LID-42007
PORT VUE	:	
MCKEESPORT PA 15133-3925	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-3641	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Emily L. Gustave, Esq.

LICENSEE COUNSEL: Pro Se

BACKGROUND:

This proceeding arises out of a citation that was issued on October 30, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Vicki's Place, Inc., License Number R-AP-SS-3641 (hereinafter Licensee).

The citation contains two counts.

Count one of 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 July 25 and August 22, 2009, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of your licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

Count two of the citation 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 August 22, September 18 and 19, 2009, Licensee, by its servants, agents or employees, permitted smoking in a public place where smoking is prohibited.

The investigation which gave rise to the citation began on June 30, 2009, and was completed on October 5, 2009. The notice of violation letter was mailed to Licensee on October 9, 2009.

An evidentiary hearing was held on this matter on March 9, 2010, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Counts One & Two

1. Licensee is a corporation located in Allegheny County, Pennsylvania and holds Restaurant Liquor license number R-AP-SS-3641. (N.T. 4).
2. On July 19, 2009, at 12:40 a.m., an enforcement officer visited the licensed premises and found no violations. (N.T. 8).
3. On Saturday, July 25, 2009, at 12:55 a.m., two enforcement officers arrived at the licensed premises, heard loud music emanating from the establishment, and found the music was provided by a juke box. (N.T. 8-9).
4. The officers departed the premises at 1:30 a.m., and could hear the amplified music up to 150 feet away. (N.T. 10).
5. The area surrounding the licensed premises is primarily residential in nature. (N.T. 10).
6. On Saturday, August 22, 2009, at 12:20 a.m., two enforcement officers returned to the licensed premises, and observed patrons and the barmaid smoking inside the establishment with ashtrays placed on the bar, and noted a "No Smoking" sign was posted in the premises. (N.T. 10-11).
7. The officers found juke box music playing and the establishment's kitchen door was propped open to the outside. (N.T. 11).
8. The officers departed the premises at 12:55 a.m., and again heard the amplified music emanating outside. (N.T. 11).
9. On Friday, September 18, 2009, at 11:45 p.m., the enforcement officers returned to the licensed premises and found ten patrons and the bartender smoking with approximately eight ashtrays located on the bar. (N.T. 12).
10. At 12:55 a.m., then being Saturday, September 19, 2009, the officers exited the establishment with no music heard emanating outside. (N.T. 12).

VICKI'S PLACE, INC.
Citation No. 09-2467

11. An enforcement officer later determined from the Pennsylvania Department of Health that Licensee was not exempt from the Clean Indoor Air Act. (N.T. 13, Exhibit C-5).

12. On October 15, 2009, Licensee received an exception to the Pennsylvania Clean Indoor Air Act to permit smoking. (N.T. 18-19, Exhibit L-1).

CONCLUSION OF LAW:

Counts One & Two -- Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified as to his hearing Licensee's jukebox music emanating outside the premises during two visits on July 25 and August 22, 2009, and observing patrons and the bartender smoking inside the premises on August 22, September 18 and 19, 2009, when Licensee did not have an exception to the Clean Indoor Air Act.

Licensee's president testified that she has a problem with a new neighbor and that she tries to control the volume of the juke box music. In July, 2009, her air conditioning unit was broken and the door was propped open. Also, she applied for an exemption to allow smoking but did not receive it until October 15, 2009.

I find the testimony of the witnesses to be credible. Because a Licensee is strictly liable for violations of the Board regulation 5.32(a) and knew that she was not exempt from the Clean Indoor Air Act until October 15, 2009, both counts are sustained.

PRIOR RECORD:

Licensee has been licensed since August 7, 1998, and has five (5) prior violations, to wit:

Citation No. 00-0314. Fine \$150.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (tickets).

Citation No. 00-1137. Fine \$1,300.00.

1. Sales to minors.
2. Minors frequenting.

Citation No. 01-2199. 1 Day suspension.

1. Permitted entertainment without an amusement permit.

VICKI'S PLACE, INC.
Citation No. 09-2467

Citation No. 02-1083. Fine \$125.00.
1. Sold liquor for consumption off premises.

Citation No. 08-0952C. Fine \$1,500.00 and R.A.M.P. training mandated.
1. Sales to a minor.
March 27, 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 a violation of the type found in this case.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, the following fine will be imposed as the penalty in this case.

Count One -- \$250.00 fine.

Count Two -- \$250.00 fine.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Vicki's Place, Inc., pay a fine of \$500.00 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 UNTIL CASE IS CLOSED.

Dated this 31ST day of MARCH, 2010.



Robert F. Skwaryk, J.

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.

VICKI'S PLACE, INC.
Citation No. 09-2467

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

09-2467
Vicki's Place, Inc.