

Mailing Date: DEC 23 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2505
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-391194
	:	
CALLAHAN'S 2615 CORP.	:	
T/A CALLAHAN'S GRILLE	:	LID - 42404
2615 SOUTH ST.	:	
PHILADELPHIA PA 19146-1039	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-OPS-2525	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 3, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Callahan's 2615 Corp., t/a Callahan's Grille, License Number R-SS-OPS-2525 (hereinafter "Licensee").

Callahan's 2615 Corp.
t/a Callahan's Grille
Citation No. 09-2505

An Administrative hearing was held on Tuesday, March 2, 2010, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation contains six counts.

The first count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on March 14, April 10, 11, 23, 25 and May 2, 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 second count charges Licensee with violation of Section 493(10) of the Liquor Code, 47 P.S. Section 4-493(10), in that on April 11, 25 and May 10, 2009, Licensee, by its servants, agents or employes, permitted a disc jockey to vocalize and permitted dancing to a disc jockey's music, without an Amusement Permit.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on April 25, 2009, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The fourth count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on April 25, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fifth count charges Licensee with violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41, in that on March 14, 29, April 11, 25, May 10, June 19 and July 25, 2009, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2007.

The sixth charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that on September 2, 2009, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises.

COUNT NOS. 1, 2, 3, 4, 5 AND 6

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on March 12, 2009 and ended on September 18, 2009. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested on October 2, 2009. The mailing was signed as received on October 6, 2009. An Amended Notice of Violation dated October 16, 2009 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received at the licensed premises on October 21, 2009. The Bureau of Enforcement sent a citation to the licensed premises dated November 3, 2009 by certified mail, return receipt requested. That certified mailing was signed as received at the licensed premises on November 5, 2009 (N.T. 25-29 and Exhibits B-1 and B-2).

2. The Office of Administrative Law Judge sent a notice of citation hearing on January 14, 2010 by certified mail, return receipt requested to the licensed premises. That mailing was signed as received on January 19, 2010.

3. An officer from the Bureau of Enforcement visited the licensed premises on March 14, 2009. He arrived at the premises between 9:00 and 10:00 p.m. Prior to entering the premises, he heard music at a distance of approximately 100 feet away from the establishment. As he walked towards the establishment, the music became louder. The officer noted that the area is primarily residential. The officer entered the establishment about 9:13 p.m. The same music he heard outside was playing inside the premises (N.T. 6-7).

4. The officer noted the bar was open and operating. There were approximately sixty patrons inside with three males and one female bartender. There was a disc jockey on the premises using a laptop and amplifying music through speakers. The officer saw two twelve by twelve speakers on the premises (N.T. 7-8).

5. The officer departed the premises between 9:50 and 9:55 p.m. As the officer walked back to his car, he heard music outside the premises at a distance of approximately 100 feet (N.T. 8).

6. The officer again went to the premises on March 29, 2009. He arrived at the premises about 12:30 a.m. The premises was open and operating and selling alcoholic beverages. The officer saw about sixty patrons and three bartenders. There was a disc jockey on the premises. He noted that the disc jockey again was using a laptop and amplifying the music through two speakers (N.T. 9).

7. The officer did not hear music outside the premises on March 29, 2009 (N.T. 9-10).

8. On April 11, 2009, the officer visited the premises. The officer walked to a nearby residence, which was about fifty feet from the premises. There he could hear loud music coming from the premises. The officer walked to another address and another street about fifty feet from the premises and he could hear the same music (N.T. 10).

9. The officer walked towards the bar. The music got louder as he came closer to the licensed premises. At approximately 9:25 p.m., the same music the officer heard outside could be heard inside the premises. There was a disc jockey on the premises using a laptop and speakers, as the officer had noted previously. There was an emcee on the premises, who was vocalizing into a microphone along with a disc jockey. Patrons were listening to the music that was being played (N.T. 10-11).

10. The officer purchased an alcoholic beverage while he was on the premises. The officer also observed the bartenders pour shots of liquor for one another. The bartenders drank those shots of liquor. The officer left the premises at approximately 10:30 p.m. (N.T. 12).

11. The officer was parked approximately seventy-five feet from the premises and was able to hear music from the premises as he approached his vehicle (N.T. 12).

12. The officer again visited the premises on April 25, 2009. The officer arrived at the premises at approximately 2:40 a.m. He parked at 26th and South Street. The officer looked through the front window and saw five patrons seated at the bar. Some barstools were up. The Licensee appeared to be closing, however, there were patrons inside with bottles of beer or glasses with some type of drinks. Patrons were consuming those drinks. As the officer got out of his vehicle and approached the bar, the patrons began coming out. The officer concluded that they were patrons in that they were seated at the bar and were wearing no uniform or staff shirts (N.T. 13-14).

13. One female remained inside; she was stumbling quite a bit. The premises appeared to be closing for the night (N.T. 14).

14. The officer had received complaints about this establishment from a resident of the neighborhood (N.T. 14-15).

15. The resident complained that there was a lot of noise coming from the premises. The officer instructed the resident to keep a log of the dates and times that he observed any action or excessive noise from the premises (N.T. 15-16).

16. The officer left the area during the early morning hours of April 25, 2009 at approximately 3:00 a.m. At approximately 11:00 p.m. on April 25, 2009, the officer returned to the premises. He noted that there were approximately thirty patrons on the premises. There were also two male bartenders and one female bartender. A disc jockey was providing music through speakers on the system. Patrons were dancing to music played by the disc jockey. On this date, the disc jockey was vocalizing through a microphone (N.T. 16-17).

17. The officer departed the premises between 11:50 p.m. and 11:55 p.m. As he left, he could hear faint music outside the premises (N.T. 17-18).

18. On May 10, 2009, the officer visited the premises between 12:30 and 12:40 a.m. Again, he noted that there were about thirty patrons. The officer saw three male bartenders and a disc jockey on the premises. The disc jockey was using two speakers, which were at either end of the bar. Patrons were dancing to music. The officer departed about 1:40 a.m. During his visit, he noted that there was alcoholic beverage service. The officer made three visits to the premises between June 19 and July 25, 2009, when the premises was open and operating. The officer found no violations during this time (N.T. 20-21).

19. An officer from the Bureau of Enforcement conducted a routine inspection in conjunction with an investigation of the premises. The officer conducted the investigation on September 2, 2009 at approximately 12:00 noon. The officer requested that the Licensee provide beer and liquor invoices. They could not provide either. The officer also noted that the premises did not have a Food Preparing or health license (N.T. 36).

20. A second resident of the neighborhood testified that beginning sometime in 2008, the licensed establishment has presented a problem in the neighborhood. This resident has complained and called 911 because of music coming from the premises. He indicated that he is approximately sixty to seventy feet away and that when music is being played on the premises, he can not hear the television in his living room (N.T. 40-41 and Exhibits B-5 and B-6).

21. On March 7, 2009, the resident indicated that they have a pre-St. Patrick's Day event called the Erin Express. The event starts about noon and a yellow school bus drops passengers off and picks them up approximately hourly (N.T. 45 and Exhibits B-5 and B-6).

22. The residents saw these people from the scuba bus going and coming from Callahan's, the licensed premises. This resident indicated that he called 911 five times in 2008, and nine times in 2009. The first time in 2009 was January 2 because of loud music. The resident indicated that it is hard for him to sleep at night in that his bedroom faces the premises. The complainant was disturbed by music on January 9, February 1, February 15, March 17 and April 23 beginning at approximately 10:30 p.m. (N.T. 42).

23. The second resident has lived in the neighborhood for over twenty-five years and said that the premises has always been a problem. He stated that the current major problem is loud music, especially on the weekends, and also loud patrons. When the bar empties out, there is a crowd standing outside the bar drinking and/or smoking (N.T. 54-55).

24. The second resident indicated that the photos fairly and accurately represent the premises, however, on March 7, 2009, during the Erin Express, there are many, many more people who are spilling out onto the street (Exhibits B-5 and B-6).

25. The resident indicated that the Erin Express runs two or three Saturdays before St. Patrick's Day and that in 2009, it occurred on the 7th and the 14th. Around noon the buses start coming and that people get on and off the bus. As the day wears on, the people are drinking heavily and often are intoxicated. Last year, one young man passed out on the resident's front steps. People were up and down the street urinating (N.T. 56-57).

26. This resident calls the police at least twice, at times on Fridays, but primarily on Saturdays (N.T. 65).

27. The third resident indicates that he lives very close to the licensed premises and he has had a continuing problem with broken bottles on his property, people urinating on his property, loud noise and double parking (N.T. 67).

28. He indicated that on May 2, 2009, there was noise and music that is normal for this licensed premises. At approximately 2:00 a.m., into the early morning hours of May 3, 2009, there were people spilling out of the bar, in that a fistfight had developed inside the bar. There was so much noise that it drew his attention (N.T. 68).

29. The noise intensified in the nature of screaming and hollering and it woke up his family members. There was an individual who was being kicked and plummeted by four or five people. The resident immediately called the police (N.T. 68).

30. Between March of 2009 and the summer of 2009, the resident called the police three or four times a month, primarily only on Friday and Saturday nights (N.T. 71).

31. Certified records from the Pennsylvania Liquor Control Board indicate that the Licensee did not have a valid Extended Hours Food Permit on April 25, 2009. The Licensee did not have a valid Amusement Permit on April 11, 2009, April 25, 2009 or May 10, 2009 (Exhibit B-4).

32. Records from the city of Philadelphia Department of Licensing and Inspections indicate that the premises had no valid Preparing and Serving Food License on March 14, April 11, April 25, April 29, May 10, June 19 or July 25, 2009. As of October 22, 2009, Licensee had not renewed the health license which expired April 30, 2007 (Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On March 14, April 10, 11, 23, 25 and May 2, 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

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t/a Callahan's Grille
Citation No. 09-2505

Count No. 2 - On April 11, 25 and May 10, 2009, Licensee, by its servants, agents or employes, permitted a disc jockey to vocalize and permitted dancing to a disc jockey's music, without an Amusement Permit, in violation of Section 493(10) of the Liquor Code, 47 P.S. Section 4-493(10).

Count No. 3 - On April 25, 2009, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 4 - On April 25, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 5 - On March 14, 29, April 11, 25, May 10, June 19 and July 25, 2009, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on April 30, 2007, in violation of Section 437 of the Liquor Code, 47 P.S. Section 4-437, and Section 5.41 of the Liquor Control Board Regulations, 40 Pa. Code Section 5.41.

Count No. 6 - On September 2, 2009, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

PRIOR RECORD:

Licensee has been licensed since May 12, 1998, and has a record of prior violations as follows:

Citation No. 04-1096. \$250.00 fine.

1. Operated the licensed establishment without a valid health permit or license.
May 26, 2004.

Callahan's 2615 Corp.
t/a Callahan's Grille
Citation No. 09-2505

DISCUSSION:

This establishment is a serious problem to the neighborhood on Friday and Saturday nights both because of the operations of its own business and other related and events, which appear to be about six or seven times a year. The noise was verified by repeated visits by an officer from the Bureau of Enforcement. At least three residents in the neighborhood testified to having been regularly disturbed by the operation of the premises from loud music, from crowds outside, from patrons from the premises who were relieving themselves on the lawns of neighbors and otherwise creating noise and disturbances. Residents also testified as to fights inside the premises, which spilled outside the premises.

Licensee has only one prior offense, however, the nature of these offenses are so profound that a monetary fine and period of suspension shall be imposed. If Licensee does not make substantial efforts to operate this premises in such a way that the neighbors are permitted peaceful enjoyment of their property, then the license will be revoked.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$400.00 and three day suspension.
- Count No. 2 - \$250.00.
- Count No. 3 - \$250.00.
- Count No. 4 - \$250.00.
- Count No. 5 - \$500.00 and submission of a copy of a current and valid health permit.
- Count No. 6 - \$100.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Callahan's 2615 Corp., t/a Callahan's Grille, License Number R-SS-OPS-2525, pay a fine of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

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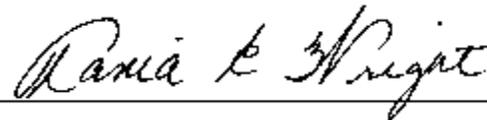
IT IS FURTHER ORDERED that Licensee, Callahan's 2615 Corp., t/a Callahan's Grille, License Number R-SS-OPS-2525, submit a copy of a current and valid health permit within twenty (20) days from the mailing date of said Order. If said documentation is not submitted within twenty (20) days from the mailing date of this Order, Licensee's license shall be suspended for one (1) day and **continuing thereafter** until such documentation is received.

IT IS ALSO ORDERED that the Restaurant Liquor License of Callahan's 2615 Corp., t/a Callahan's Grille, License Number R-SS-OPS-2525, be suspended for a period of three (3) days beginning on a Thursday. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 3RD day of December, 2010.



Tania E. Wright, J.

NOTE: 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.

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Callahan's 2615 Corp.
t/a Callahan's Grille
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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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