

Mailing Date: JAN 27 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2585
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-391306
v.	:	
	:	LID - 56097
RISING SUN MOTEL CORP DAKOTA	:	
STEAKHOUSE JOINT VENTURE	:	
T/A DAKOTA STEAKHOUSE &	:	
SALOON	:	
1095 WAYNE AVE.	:	
CHAMBERSBURG, PA 17201-2975	:	
	:	
FRANKLIN COUNTY	:	
LICENSE NO. H-AP-SS-6045	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
LICENSEE: STEVE C. NICHOLAS, ESQUIRE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on November 12, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against RISING SUN MOTEL CORP. DAKOTA STEAKHOUSE JOINT VENTURE, License Number H-AP-SS-6045 (hereinafter "Licensee").

The citation contains three counts.

The first 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 May 9, 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(1) of the Liquor Code [47 P.S. §4-493(1)] in that on May 9, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The third 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 April 4 and May 9, 2009, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The investigation which gave rise to the citation began on March 23, 2009 and was completed on May 21, 2009; and notice of the violation was sent to Licensee by Certified Mail on June 19, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 16, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 April 4, 2009 an officer of the Bureau entered the licensed premises in an undercover capacity at 12:15 a.m. Upon entry, the officer noted that approximately 50 percent of the 50 patrons, together with several employes inside the licensed premises, were smoking (N.T. 7).

2. On May 9, 2009 at 1:05 a.m. the officer arrived at the licensed premises. He parked at the back of the licensed premises, and upon exiting his vehicle he could hear music. He was approximately 40 feet from the licensed premises when he could hear the music (N.T. 9-10). The officer then walked to the licensed premises to verify that the music was coming from within. He then conducted a sound check and could hear the music at distances up to 154 feet (N.T. 9-10).

3. The officer then entered the licensed premises where he found two female bartenders rendering service to about 40 patrons. He observed that the source of the music was a DJ playing music that was amplified through loudspeakers (N.T. 11).

4. While the officer was inside the licensed premises he observed that 50 to 60 percent of the patrons were engaged in smoking. The bartenders were also engaged in smoking and no attempt was made to stop anyone from smoking (N.T. 11).

5. The officer's attention was drawn to a couple approximately 35 to 40 years old seated at one end of the bar. The reason his attention was drawn to him was that the male was particularly loud and talking in a very slurred voice (N.T. 11-12).

6. The officer walked down and took a seat near them so he could observe them (N.T. 12).

7. The officer observed that the male patron had very slurred speech. As he sat in his seat he would rock and would try to steady himself at the bar. His head would hang forward at times. It seemed as though his head was very heavy. He seemed to have a hard time keeping his head up (N.T. 11-13).

8. At 1:20 a.m. the bartender picked up a bottle of alcohol and poured a drink for the male patron. Although the officer could not see the label on the bottle, it came from the speed rack where bottles of alcoholic beverages are kept. The bottle also had a pourer in it of the type used for alcohol (N.T. 13-14).

9. The male patron paid for the drink himself (N.T. 14).

10. At 1:30 a.m., the bartenders announced last call (N.T. 15).

11. At that point, Perry Panagos, principal of Licensee Joint Venture was on the patron side of the bar. He was walking around the bar socializing with people. He walked behind the bar at that time and was making himself a drink. When he did so, the male patron described above tried to order a drink from him. He was trying to drink the drink that he had just been served very fast to get another one. As he tried to order the drink, Mr. Panagos couldn't understand what he said because his voice was very slurred (N.T. 15).

12. The officer was listening to the conversation between the patron and Mr. Panagos and he could not understand the patron due to his slurred speech (N.T. 16).

13. The patron tried several times and Mr. Panagos could not understand him. After repeating himself a third time, Mr. Panagos said he would get a bartender to get him a drink (N.T. 16).

14. After Mr. Panagos indicated he would get a bartender to get the patron a drink, the patron laid his head down on the bar, closed his eyes and went to sleep (N.T. 16).

15. Later, a bartender approached the patron and told him that a bouncer had cut him off and that he would need to leave because he was not going to be served again (N.T. 16).

16. The patron became very upset. He said, "You're kidding me." The bartender told him it was not his decision, that it was the bouncer's and if it was up to the bartender, he would serve him (N.T. 16).

17. The patron became very upset. He said he wanted to speak with the bouncer that cut him off. He kept saying, "You're kidding me." (N.T. 16)

18. At 1:50 a.m. the bouncer that cut the patron off approached. He advised the patron that he was cut off, that he was observed showing signs of intoxication. He said to the patron, "You were drunk. You were laying your head on the bar. You were going to sleep. You're cut off, you need to leave." At this the patron kept saying, "You're kidding me." (N.T. 17)

19. The patron kept saying, "If I was (drunk) I would say so, and I'm not." He would not take no for an answer (N.T. 17).

20. Finally the bouncer said, "Get him a drink" and walked away.

21. As soon as the bartender finished waiting on another patron, she came over, picked up a highball glass, poured Jack Daniel's whiskey into it and then poured some kind of mixer in as well. She then served the drink to the aforementioned patron (N.T. 18).

22. All of the aforementioned activity took place in front of Mr. Panagos who watched the whole thing (N.T. 18).

23. When the aforementioned patron exited the licensed premises, the officer followed him out. He observed the patron's female companion help the patron into the passenger's seat of a car. Since the female patron didn't appear intoxicated, he let the couple go on their way (N.T. 20).

24. While outside, the officer could hear music emanating from the bar. He conducted a sound check and could hear music emanating from the bar at distances up to 110 feet (N.T. 20).

25. The source of the music that the officer heard was amplified music produced by a DJ (N.T. 21).

CONCLUSIONS OF LAW:

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

DISCUSSION:

COUNT 1

Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] prohibits a Licensee from using a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement of can be heard outside. In this case, the record establishes that on May 9, 2009 an officer of the Bureau, while outside the licensed premises could hear music amplified through loudspeakers by a DJ. The charge in Count 1 of the citation is, therefore, sustained.

COUNT 2

Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] prohibits the sale, furnishing or giving of alcoholic beverages to a visibly intoxicated patron. In this case, the record discloses that a bartender or bartenders on the licensed premises furnished two drinks to a male patron who was clearly evidencing visible signs of intoxication. The charge in Count 2 of the citation is therefore sustained.

COUNT 3

Criminal penalties are provided for violations of the Clean Indoor Air Act [35 P.S. §637.8(e)]. Therefore, violations of this Act constitute other sufficient cause as that term is used in Section 471 of the Liquor Code [47 P.S. §4-471] making a licensee who violates this Act liable for penalties provided by that Section as “other sufficient cause.” (*Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988).

The Clean Indoor Air Act [35 P.S. §637.1 et seq] makes it unlawful for the proprietor of a business to allow anyone to smoke in a public area unless that individual has obtained an exception as provided in the Act from the Pennsylvania Department of Health.

The record in this case discloses that Licensee allowed smoking on the licensed premises on the dates set forth in Count 3 of the Citation. Further, the record also discloses that Licensee did not have the appropriate exception from the Department of Health to allow such smoking.

PRIOR RECORD:

Licensee has been licensed since March 14, 2006, and has had three prior violations:

Citation No. 06-2922. Fine \$400.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time. August 25, 2006.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. August 25, 2006.

Citation No. 08-2199. Fine \$3,250.00 and RAMP training mandated.

1. Used loudspeakers or devices whereby music could be heard outside. May 17 and June 1, 2008.
2. Sales to visibly intoxicated persons. June 1, 2008.
3. Corporate manager was visibly intoxicated on the licensed premises. June 1, 2008.

Citation No. 09-0569. Fine \$2,000.00.

1. Operated the licensed establishment without a valid health permit or license. January 1 through 20, 2009.
2. Engaged in unlawful discrimination in that you admitted female patrons for an admission fee of \$20.00 while charging an admission fee of \$30.00 to male patrons. October 11, 2008.
3. Sold and/or served an unlimited or indefinite amount of alcoholic beverages. October 11, 2008.
4. Failed to label beer taps properly. January 16, 2009.
5. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of the licensed business for a period of two years. January 30, 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 Counts 1 and 3 of this case.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 2 of this case.

This office takes notice that Licensee became RAMP certified effective September 10, 2009.

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

- Count 1 - \$500.00 fine
- Count 2 - \$3,000.00 fine and remain RAMP compliant
- Count 2 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee RISING SUN MOTEL CORP. DAKOTA STEAKHOUSE JOINT VENTURE, pay a fine of \$3,750.00 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.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee must remain in compliance until **January 24, 2012**.

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

Dated this 25<sup>TH</sup> day of January, 2011.



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. 09-2585  
Rising Sun Motel Corp.  
Dakota Steakhouse Joint Venture