

Mailing Date: SEP 27 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2950
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-398611
v.	:	
	:	LID - 32612
THE SALOON SINCE 1914, INC.	:	
643-645 N. MAIN ST.	:	
WILKES BARRE, PA 18705-1732	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-972	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL STRONG  
LICENSEE: JASON MESSINGER, PRO SE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on December 23, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against THE SALOON SINCE 1914, INC., License Number R-AP-972 (hereinafter "Licensee").

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 November 26, 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 investigation which gave rise to the citation began on August 11, 2009 and was completed on November 26, 2009; and notice of the violation was sent to Licensee by Certified Mail on December 8, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 3, 2009 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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:

1. On November 26, 2009 at 1:11 a.m., an officer of the Bureau arrived at the licensed premises (N.T. 10).
2. As the officer exited his vehicle he could hear music emanating from the licensed premises (N.T. 10).
3. The officer conducted a sound check, and could hear music emanating from the licensed premises at distances up to 420 feet (N.T. 10-12).
4. At 1:16 a.m. the officer entered the licensed premises where he observed a four piece band playing music that was amplified through loudspeakers (N.T. 12-13).
5. The officer exited the licensed premises at 1:25 a.m. and could hear music emanating from the licensed premises at distances slightly under the distances he had paced off before entering the licensed premises (N.T. 13).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The record clearly establishes that the investigating officer could hear music which was amplified over loudspeakers emanating from the licensed premises. It is therefore clear that the regulation involved in this case has been violated. The charge in the citation is, therefore, sustained.

PRIOR RECORD:

Licensee has been licensed since August 9, 1993, and has had eleven prior violations:

Citation No. 93-2351. 2 days suspension.

1. Sales between 2:00 A.M. and 7:00 A.M.

Citation No. 01-2014. Fine \$200.00.

1. Sold alcoholic beverages after your Restaurant Liquor License expired on August 31, 2001 and had not been renewed and/or validated. September 6, 2001.

Citation No. 03-0313. Fine \$100.00.

1. Permitted entertainment without an Amusement Permit. January 22 and February 5, 2003.

Citation No. 03-0904. Fine \$200.00.

1. Used loudspeakers or devices whereby music could be heard outside. March 5, 2003.
2. Permitted entertainment without an Amusement Permit. March 5, 2003.

Citation No. 04-0192. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 12, 2003.

Citation No. 04-1877. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. March 5 and May 21, 2004.

Citation No. 05-1664. Fine \$250.00.

1. Fortified, adulterated and/or contaminated liquor. July 21, 2005.
2. Operated the licensed establishment without a valid health permit or license. July 21, 2005.

Citation No. 05-2341. Fine \$175.00.

1. Issued worthless checks in payment for malt or brewed beverages. August 26 and September 2, 2005.

Citation No. 06-0135X. Fine \$275.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 18, 2005.

Citation No. 09-1391. Fine \$300.00.

1. Used loudspeakers or devices whereby music could be heard outside. May 6, 2009.
2. Failed to post signage required by the Clean Indoor Air Act. May 6, 2009.
3. Permitted smoking in a public place where smoking was prohibited. May 6, 2009.

Citation No. 09-1919. Fine \$375.00.

1. Not a bona fide restaurant in that food items were insufficient and/or failed to provide food upon request. May 28, June 10 and July 15, 2009.
2. Failed to post signage required by the Clean Indoor Air Act. May 28 and July 15, 2009.
3. Used loudspeakers or devices whereby music could be heard outside. June 10, 2009.
4. Permitted smoking in a public place where smoking was prohibited. July 15, 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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$450.00.

ORDER

THEREFORE, it is hereby ordered that Licensee THE SALOON SINCE 1914, INC., pay a fine of \$450.00 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 pending final resolution of the penalty in this matter.

Dated this 20<sup>TH</sup> day of September, 2010.



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. 09-2950  
The Saloon Since 1914, Inc.