

Mailing Date: OCT 27 2010

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 09-2983
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W09-395528
 :
 v. :
 : LID - 501
 :
 LOYAL ORDER OF MOOSE :
 DOYLESTOWN LODGE NO 1284 :
 127 E STATE ST :
 PO BOX 178 :
 DOYLESTOWN PA 18901-4363 :
 :
 BUCKS COUNTY :
 LICENSE NO. C-174 :

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: Stanley J. Wolowski, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on December 23, 2009. There are two counts in the citation.

The first count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, on December 27, 2008, February 10, May 9, June 13 and July 1, 2009, by operating the licensed establishment in a noisy and/or disorderly manner.

The second count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on November 14, 2009, by failing 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.

A hearing was held on Thursday, July 22, 2010, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Jennifer James has lived at 100 Garden Alley, about 40 feet from Licensee's premises, for fifteen years. The first ten or eleven years of that time there was absolutely no problem with the premises, but about three or four years ago there began to be a tremendous amount of disruption in the neighborhood: music, shouting and screaming in the middle of the night. She found it unpleasant and had to call the police many times (N.T. 7-8).

2. On Saturday, December 27, 2008, Ms. James was disturbed by loud music coming from the Moose at around midnight, on account of which she called police. This happened again between 9:30 and 10:00 p.m. on February 10, 2009 (N.T. 9-10).

3. Since the summer of 2009, Ms. James has not again heard loud music coming from the premises (N.T. 11).

4. Cheryl Svoboda has lived at 114 East State Street, about fifty feet from the licensed premises, for a little over three years. During 2008 and 2009 she found it necessary to call police on numerous occasions because of loud music and disorderly conduct by Moose patrons, yelling, screaming, and walking in front of cars in the late evening and early morning (N.T. 13).

5. On February 10, 2009, at about 9:00 p.m., Ms. Svoboda complained to police because people in the second floor of the licensed premises were hanging out of open windows, making comments to people walking on the street. On June 13, 2009, Ms. Svoboda complained to police because people were having loud disagreements in the alley next to the premises (N.T. 13-16).

6. On July 1, 2009, Ms. Svoboda complained to police because a woman and two men sitting on a wall to the right hand side of the Moose were having a heated discussion, which escalated into a brawl, at 3:30 or 4:00 a.m. Police arrived and arrested the two men for disorderly conduct (N.T. 16-17, 37-38).

7. Since the premises no longer has bands and crowds of young people, Ms. Svoboda believes there has been improvement – nothing like it was during the summer of 2009 (N.T. 17).

8. Doylestown Police Officer Edward Hill responded to a complaint of noise and loud music at the licensed premises at 11:50 p.m. on December 27, 2008. He arrived at the premises and heard the noise, mostly from the west side of the building. A door on that side of the building was open about 12 inches. The officer spoke with a bartender about this. The door was closed and the sound was muffled after that was done (N.T. 19-20, 24).

9. On November 14, 2009, Officer Hill visited the premises to see if any patrons were present after hours. At 3:42 a.m. the officer was admitted to the premises by one person and saw three other people seated at the bar. Two of the four people present claimed to be employees; the other two were patrons who said they were helping to clean up. One of these was highly intoxicated, though, and would not have been of much use. There were no alcoholic beverages or money on the bar (N.T. 21-22, 26).

10. Although Officer Hill has been dispatched to the premises for complaints of loud music or disorderly operation during the past year, the number of complaints has diminished (N.T. 25).

11. Corporal Zsevolod Pospisio has been employed by the Doylestown Borough Police Department for 27 years, and is intimately familiar with the licensed premises. He responded to Ms. Svoboda's complaint at about 9:20 p.m. on May 9, 2009. On arrival, he found that the front windows of the Moose building were open, and there were indeed juveniles hanging out of them, screaming at other kids who were in the front. The corporal spoke with the manager, and the condition was corrected (N.T. 27-28).

12. On June 13, 2009, Corporal Pospisio responded to the Moose at about 2:20 a.m. The complaint was because of noise, but when the corporal arrived the band had stopped playing and was leaving the premises in a noisy manner, yelling at each other and banging their equipment. The corporal also spoke with a couple outside the premises who had been having a domestic dispute. Since that time, with the music stopped, noise complaints have gone away (N.T. 29-31).

13. Sergeant John Gerhart (retired) has been employed by the Doylestown Borough Police Department for 37 years. On February 10, 2009, he was dispatched to the Moose on two occasions between 9:15 and 9:30 p.m., due to complaints of loud music. The first time he told people in the licensed premises to turn the music down, and they did. Five or ten minutes later the music was back up again. The sergeant returned and threatened a citation for disorderly conduct. Compared to 2007 and 2008, there have been fewer calls to the premises; it has "mellowed" (N.T. 36-37, 40).

14. Evan Walton was the Governor (leader) of this lodge in late 2008 and early 2009; he is now the Treasurer. When he assumed office as Governor, he found it necessary to work with the existing board of officers, which he thought lacked good stewardship. Over a period of about six months, though, the membership of the board, and thus its "personality," changed. (N.T. 42-52).

15. In late 2007, Licensee entered into an arrangement with Siren Records, a nearby record store, to host concerts intended to be attractive to adolescents. The club was not doing well financially, and this was an opportunity to make money. All alcoholic beverages were locked up for these events, as most of the concertgoers were minors. These concerts were a principal cause of the complaints outlined above. Entertainment presented for members in the club's social quarters during this time also featured rock music, as frequently as four nights a week (N.T. 53-61).

16. When Mr. Walton became Governor the club had an attorney review the contract with Siren Records, and received the advice that the arrangement could not be terminated because Siren would incur damages for cancelled bookings for which the club could be sued. The relationship with Siren diminished and finally ended in May, 2009 (N.T. 62-64).

17. The building housing the licensed premises was acquired by 127 Investments, L.P., on June 29, 2009; the licensed club is now a tenant of that limited partnership. The partnership has performed substantial remodeling at the premises, including the installation of new windows which accept foam inserts to completely contain sound within the building (N.T. 77-82).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since January 1, 1934, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 01-0178. \$50.00 fine.

1. Gambling (sports pools).

Citation No. 05-2047X. \$150.00 fine.

1. Bad checks for malt or brewed beverages. May 20, June 11 and July 1, 2005.

Citation No. 06-0828. \$350.00 fine. Suspended one day for late payment.

1. Sales to nonmembers. February 12, 2006.

Citation No. 07-1453. \$400.00 fine.

1. Sales to nonmembers. April 12 and 19, 2007.

Citation No. 08-1293. \$1,000.00 fine and 3 days suspension.

1. Failed to require patrons to vacate the premises by the required time. January 12, 2008.
2. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. January 12, 2008.
3. Noisy and/or disorderly operation. November 22, December 6, 2007, January 12 and 13, 2008.

Citation No. 09-1469. \$600.00 fine.

1. Sales to nonmembers. March 11, April 8, 23, 25 and May 24, 2009.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

In this case Licensee submitted a waiver of hearing, with a recommended penalty of \$350 for each of the two counts. In reviewing the prior history, I noticed that the facts set forth in the Bureau's prehearing memorandum were remarkably similar to the facts found by my colleague, the Honorable Tania E. Wright, in the adjudication of Citation No. 08-1293.

In that case Judge Wright merged the first two counts and imposed a \$250 fine; for the third count her penalty was a \$750 fine and a one day suspension. I could not accept the idea that a repeat performance of the prior violation – with five violation dates instead of four – deserved a lesser penalty. Therefore I rejected the waiver and ordered the case to be listed for hearing.

The evidence persuades me that the club is now going in a different direction, and that the license should be permitted to continue at this location. Nevertheless, there must be a sanction for the behavior shown by the evidence in support of the first count, and the penalty for that count must be harsher than the one imposed for Citation No. 08-1293. The violation found for the second count, however, is not as serious as the similar violation found previously.

Penalties are assessed as follows:

- Count 1 – a fine of \$900.00 and suspension of license for two days.
- Count 2 – a fine of \$200.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Loyal Order of Moose Doylestown Lodge No. 1284, License No. C-174, shall pay a fine of one thousand one hundred dollars (\$1,100.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that the Club Liquor License of Licensee, Loyal Order of Moose Doylestown Lodge No. 1284, License No. C-174, shall be suspended for a period of two (2) days, BEGINNING at 7:00 a.m. on Monday, November 15, 2010, and ENDING at 7:00 a.m. on Wednesday, November 17, 2010.

Licensee is directed on Monday, November 15, 2010, , at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Wednesday, November 17, 2010, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 4TH day of October, 2010.



David L. Shenkle, J.

jb

NOTICE: 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 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

Citation No. 09-2983

Loyal Order of Moose Doylestown Lodge No. 1284