

Mailing Date: FEB 09 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0206
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-406085
v.	:	
	:	LID - 56329
GATOR DEVELOPMENT, LLC	:	
T/A PETE'S CAFE	:	
401-403 MARKET ST.	:	
NEW CUMBERLAND, PA 17070-1939	:	
	:	
	:	
CUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-15960	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL BALLARON
LICENSEE: NO APPEARANCE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 5, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against GATOR DEVELOPMENT, LLC, License Number R-AP-SS-15960 (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 January 1, 2010, Licensee, by its servants, agents or employees, 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 January 1, 2010 and was completed on January 1, 2010; and notice of the violation was sent to Licensee by Certified Mail on January 29, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 8, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Jack M. Seitz, Esquire, 7535 Windsor Dr., Ste. 200, Allentown, PA 18195-1034 by certified mail, return receipt requested on October 26, 2010. The notice set forth the date and time of the hearing as December 8, 2010 at 10:00 a.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

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 January 1, 2010 at 12:55 a.m., an officer of the Bureau entered the licensed premises (N.T. 8).
2. Upon entry the officer observed approximately 20 patrons (N.T. 8).
3. While on the licensed premises, the officer observed an employe start up a jukebox. The music from the jukebox was amplified through loudspeakers (N.T. 8-9).
4. The officer departed the licensed premises at 1:50 a.m. and could hear amplified music coming from the speakers attached to the jukebox at distances up to 170 feet (N.T. 9-10).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since May 18, 2006, and has had four prior violations:

Citation No. 08-0146. Fine \$2,550.00 and RAMP training mandated.

1. Used loudspeakers or devices whereby music could be heard outside. May 26, 2007.
2. Sales to a visibly intoxicated person. July 5, 2007.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years. December 12, 2007.

Citation No. 08-1111X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. February 15 and 26, 2008.

Citation No. 08-1643X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 29, May 9 and 14, 2008.

Citation No. 08-2065C & 08-2156X consolidated. Fine \$1,550.00.

1. Sales to a minor. July 9, 2008.
2. Issued worthless checks in payment for malt or brewed beverages. July 18, 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 violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$400.00.

ORDER

THEREFORE, it is hereby ordered that Licensee GATOR DEVELOPMENT, LLC, pay a fine of \$400.00 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 25TH 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

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. 10-0206
Gator Development, LLC