

Mailing Date: FEB 25 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0580
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-408968
v.	:	
	:	LID - 33884
POPPE-REED, INC.	:	
T/A BEANIE'S	:	
78-80 W. MAIN ST.	:	
MT. JOY, PA 17552-1323	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-SS-13790	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL BALLARON
LICENSEE: WANDA REED, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 25, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against POPPE-REED, INC., License Number R-AP-SS-13790 (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 February 27, 2010, 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 February 27, 2010 and was completed on March 8, 2010; and notice of the violation was sent to Licensee by Certified Mail on March 17, 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.

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 February 27, 2010 at 12:40 a.m., an officer of the Bureau arrived in the vicinity of the licensed premises. At that point, while still in his state vehicle, the officer could hear the sound of music and bass noise emanating from the licensed premises (N.T. 11).

2. The officer parked his vehicle and approached the front door of the licensed premises and verified that the music was in fact coming from within the establishment. He then conducted a sound check and could hear music emanating from the licensed premises at distances up to 140 feet (N.T. 11-12).

3. The officer entered the licensed premises at approximately 12:48 a.m. Upon entry and being carded, the officer proceeded to the bar. At the bar he observed two female bartenders rendering service to approximately 25 patrons (N.T. 12-13).

4. The officer observed that entertainment for the evening was being provided by a karaoke machine located in the dining room. Patrons were singing on a karaoke machine. The music from the machine was amplified through loudspeakers (N.T. 12-13).

CONCLUSION OF LAW:

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

DISCUSSION:

Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] provides that it is illegal for music or other sounds produced on the licensed premises and amplified through loudspeakers to escape the premises and be heard outside. In this case, the officer heard music and other sounds from speakers on a karaoke machine outside of the licensed premises. Consequently, I conclude that the charge in the citation has been sustained.

PRIOR RECORD:

Licensee has been licensed since May 24, 1994, and has had four prior violations:

Citation No. 05-0567. Fine \$300.00.

1. Discounted the price of alcoholic beverages in excess of 2 hours in a business day. January 18, 2005.

Citation No. 05-2677. Fine \$1,300.00.

1. Sales to a visibly intoxicated person. September 22, 2005.

Citation No. 07-1410. Fine \$1,750.00 and RAMP training mandated.

1. Sales to a visibly intoxicated person. March 31, 2007.

Citation No. 09-1076. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside. February 14, 26 and April 3, 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 \$350.00.

ORDER

THEREFORE, it is hereby ordered that Licensee POPPE-REED, INC., pay a fine of \$350.00 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 11TH day of February, 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. 10-0580
Poppe-Reed, Inc.