

Mailing Date: DEC 23 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0744
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-407776
	:	
FINNIGAN'S CASTLE INC.	:	
T/A FINNIGAN'S WAKE	:	LID - 39148
537 N. 3 <sup>RD</sup> ST.	:	
PHILADELPHIA PA 19123-2936	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-2922	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 13, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Finnigan's Castle, Inc., t/a Finnigan's Wake, License Number R-AP-SS-2922 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 27, 2010, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

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 March 17, 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.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on January 29, 2010 and ended on March 17, 2010. The Bureau sent a notice of violation letter by certified mail, return receipt requested but they did not present a signed receipt card at the time of hearing but did present a log and proof of mailing. A notice of violation letter dated March 29, 2010 was sent to the licensed premises by certified mail, return receipt requested. In that Licensee did not receive a signed receipt card, the return receipt card was not returned, however, the Bureau presented a log indicating that the item had also been sent by first class mail. A citation dated April 13, 2010 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on April 15, 2010. The citation was in fact issued within thirty days of the close of the investigation and serves as sufficient notice of the violation. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on June 9, 2010 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received at the licensed premises on June 15, 2010 (N.T. 10-15 and Exhibits B-1 and B-2).

2. In January of 2010, an officer from the Bureau of Enforcement was assigned to investigate the licensed premises as the result of a complaint from the Northern Liberties Nuisance Task Force. The complaint alleged loudspeaker violations (N.T. 5-6).

3. The officer made two visits to the licensed premises. The first visit was made in February or March of 2010 but no violations were found at that time. The officer made a second visit to the premises on March 17, 2010 at approximately 12:30 p.m. (N.T. 6-7).

4. The officer was accompanied by a second officer from the Bureau of Enforcement. The officers parked on Second Street underneath the I-95 in the Northern Liberties area. When they entered the premises, it was open and operating with three bartenders and approximately 100 patrons on the premises. The officers also noted that there was a four member band (N.T. 7).

5. When the officers first arrived, the band was not playing and subsequently the four member Irish band began playing amplified music through speakers. There were approximately ten loudspeakers operational in various portions of the premises. The officers remained inside until approximately 1:50 p.m. (N.T. 8).

6. While on the premises, the officers purchased alcoholic beverages (N.T. 9).

7. When the officers departed, music was playing. The officers paced off east on Springarden approximately eighty feet until they could no longer hear music. They then walked to the intersection of North 3<sup>rd</sup> and Green Street and could still hear the music emanating from the building from a distance of about fifty feet (N.T. 9).

8. The music inside was Irish music that could be heard outside the premises (N.T. 9-10).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On March 17, 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a).

PRIOR RECORD:

Licensee has been licensed since October 7, 1996, and has a record of prior violations as follows:

Citation No. 99-0912. \$2,000.00 fine and 3 days suspension. Licensee's Appeal to Board dismissed. Licensee's Appeal to Common Pleas Court denied but penalty modified to 2 days suspension. Licensee's Appeal to Commonwealth Court remanded case to Common Pleas Court for imposition of penalty. Common Pleas Court ordered Licensee to pay fine of \$2,000.00 and imposed a one day suspension.

1. Noisy and/or disorderly operation.
2. Sales to visibly intoxicated persons.

DISCUSSION:

The Licensee used loudspeakers whereby the sound of music or other entertainment could be heard outside of the licensed premises. Under the circumstances, a \$400.00 monetary penalty shall be imposed.

Finnigan's Castle, Inc.  
t/a Finnigan's Wake  
Citation No. 10-0744

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

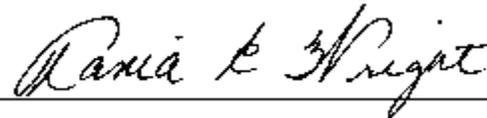
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Finnigan's Castle, Inc., t/a Finnigan's Wake, License Number R-AP-SS-2922, pay a fine of Four Hundred Dollars (\$400.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 2<sup>ND</sup> day of December, 2010.



Tania E. Wright, J.

**NOTE:** MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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Finnigan's Castle, Inc.  
t/a Finnigan's Wake  
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Detach Here and Return Stub with Payment

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The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, PA 17110-9661

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