

Mailing Date: DEC 20 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1222
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-409832
v.	:	
	:	LID - 46386
SEASON'S RESTAURANT AND	:	
NIGHT CLUB, INC.	:	
210 S. MAIN ST.	:	
YEAGERTOWN, PA 17099-9606	:	
	:	
	:	
MIFFLIN COUNTY	:	
LICENSE NO. R-AP-SS-9895	:	

**BEFORE JUDGE THAU
BUREAU COUNSEL NICKLES
LICENSEE: STEVE C. NICHOLAS, ESQUIRE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 14, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against SEASON'S RESTAURANT AND NIGHT CLUB, INC., License Number R-AP-SS-9895 (Licensee).

The citation contains three counts.

The first count charges Licensee with a violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on March 20, May 2 and 14, 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 second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471]. The charge is that on March 20, 21, April 3, May 2 and 14, 2010, the licensed establishment was operated in a noisy and/or disorderly manner.

The third count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on April 3, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two visibly intoxicated male patrons.

An evidentiary hearing was conducted on June 29, 2011 in the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 18, 2010 and completed it on May 29, 2010 (N.T. 18).
2. The Bureau sent a notice of alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on June 2, 2010. The notice alleged violations as charged in the citation (Commonwealth Exhibit No. C-1, N.T. 15).

Count No. 1

3. On March 20, 2010, two Bureau Enforcement Officers visited the premises in an undercover capacity. The Officers heard amplified music escaping the premises at 11:55 pm at a distance of 75 feet (N.T. 24-27).
4. Prior to entering the premises, a Bureau Enforcement Officer saw patrons in the parking lot that were talking loudly. There were also patrons in a deck area of the licensed premises who were also speaking loudly (N.T. 24).
5. Licensee permitted amplified music to escape the premises on May 2 and 14, 2010, which was heard as far away as 100 feet on both dates (N.T. 54-57).
6. Licensee no longer provides live entertainment. Licensed does provide entertainment by jukebox. In June 2010, the jukebox vendor altered the sound settings by removing all bass and lowering the maximum sound level (N.T. 210-213).

Count No. 2 (Findings of Fact No. 3 and No. 4 also apply)

7. On March 21, 2010, a customer, (C1), went to the deck area of the premises at approximately 1:15 am after being served a beer inside. C1's girlfriend and her coworkers were arguing with several other patrons in the deck area. C1 approached those several patrons to intimidate them, hoping they would stop bothering his girlfriend. By the time C1 took a second step, an unidentified individual went up to him and punched him in the head. Although C1 was left with a knot on his forehead and a small cut above his eye, he did not seek any medical attention (N.T. 163-168; 172-175).

8. Mr. A., Licensee's President was at the premises with his wife on the evening of March 21, 2010 as customers. At 1:30 am Mr. A.'s wife, who had been in the deck area, entered the interior of the premises. She advised Mr. A. that he needed to go to the deck area as a fight might ensue. Mr. A. complied. When he arrived, there were two customers on the ground and another two who were either attempting to stop the altercation or contributing to it. Mr. A. separated the parties (N.T. 190-193, 197-198).

9. A patron (P1) entered the premises on April 3, 2010. A customer, who was seated at the bar, began a conversation with P1. P1 was having a heated discussion with another patron (P2). The customer asked P1 to come with her out to the deck area for a cigarette break. It was her intention to separate P1 from P2 to avoid any further escalation of the argument (N.T. 279-285).

10. Two undercover Bureau Enforcement Officers witnessed P1 and P2 arguing. Their arguing was not constant. Neither P1 nor P2 threatened anyone with bodily harm (N.T. 94-96).

11. Later in the evening, a local police officer was dispatched to the licensed premises. He approached P1 and P2 in the parking lot to separate them as they were arguing. The local police officer was there strictly as a back-up for the two Bureau Enforcement Officers. Based on P1 and P2's behavior, the local police officer concluded they had been drinking alcoholic beverages (N.T. 178-183).

12. Before April 3, 2010, Licensee installed seven cameras scanning a major portion of the interior of the licensed premises. After April 3, 2010, Licensee installed eight more cameras, three of which are now surveilling the deck area. Licensee has 12 cameras inside the establishment and three on the deck (N.T. 223).

Count No. 3

13. The undercover visit of April 3, 2010, by two Bureau Enforcement Officers began at 1:10 am. P1's eyes were half shut. He was unsteady and staggering as he walked through the premises. At 1:13 am, he ordered a mixed drink at the bar. For the next 45 minutes or so, P1 argued with P2. P2 also displayed slurred speech; he swayed back and forth. One of the Officers approached P1 and P2. The Officer asked P1 what he was drinking. P2 yelled at the Officer telling him to, "Get the fuck out of here." A few minutes later, P2 approached the table where the Officers were seated. P2 displayed slurred speech and glassy eyes. He apologized for his previous yelling (N.T. 40-42).

14. P2 returned to the bar at about 1:30 am. The bartender announced last call. He asked P2 if he wanted anything to drink. P2 replied that he was done. At 1:45 am, P2 nevertheless ordered a mixed drink (N.T. 40-46).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1

2. Count No. 1 is **sustained** as charged.

Count No. 2

3. Count No. 2 is **sustained** as to March 20, May 2 and 14, 2010 only.

Count No. 3

4. Licensee, by its servants, agents or employes sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated patron on April 3, 2010.

DISCUSSION:

Service to a Visibly Intoxicated Patron

I sustain Count No. 3 based on evidence that Licensee served to one visibly intoxicated patron only, P2 (Finding of Fact 14). Although I also concluded that P1 was visibly intoxicated, I found nothing in the record that P1 was served while in this condition.

Why I Dismiss Count 2 as to March 21 and April 3, 2010

In defense of the charges regarding the events of April 3, 2010, Licensee provided a surveillance video which recorded the pertinent events. I viewed the video at the hearing. To ensure a clear record and when appropriate, I described the events which the video depicted. I permitted both sides the opportunity to raise objection to my characterization. As I heard no objections, I consider my characterizations to be accurate.

Regrettably, Licensee's surveillance system records one image every second, obviously for the purpose of saving computer storage. Consequently, the video did not depict a smooth, real-time portrait. Movement of those in the video was unnatural. In the end, the video offered no assistance in determining whether Licensee sold alcoholic beverages to visibly intoxicated patrons.

However, because the video was time stamped, I was able to determine accurately the precise time when specific actions took place (N.T. 226-268). The video does confirm that P1 and P2 began arguing at 1:24 am until 1:32 am, a total of eight minutes. For the next 20 minutes, there was no argument between the two. This 20 minute span was followed by a four minute interval in which P1 and P2 argued (N.T. 271-273). Both the video and the testimony confirm nothing of any significance actually occurred between P1 and P2.

Similarly, the events of March 21, 2010 are of limited duration. My experience has taught me that bar fights often occur spontaneously, without any real warning. They also tend to be of very short duration as was the case here. I cannot conclude that a fight, lasting no more than several minutes, in and of itself, demonstrates the manner in which Licensee operates.

Licensee's operation for the dates I have found a violation, are those where amplified music escaped the premises.

PRIOR RECORD:

Licensee has been licensed since July 25, 2000, and has had eight prior violations:

Adjudication No. 01-2317. Fine \$100.00.

Used loudspeakers or devices whereby music could be heard outside.

On 12 dates between August 24 and September 16, 2001.

Adjudication No. 02-1580. Fine \$200.00.

1. Offered and/or gave alcoholic beverages as a prize.
June 5, 16, July 15, 25, 26 and 28, 2002.

2. Used loudspeakers or devices whereby music could be heard outside.

July 25, 26 and 28, 2002.

Adjudication No. 02-1697. Fine \$125.00.

Used loudspeakers or devices whereby music could be heard
outside.

August 24, 2002.

Adjudication No. 02-2161. Fine \$250.00.

Used loudspeakers or devices whereby music could
be heard outside.

November 15, 2002.

Adjudication No. 04-0571. Fine \$1,000.00 and 30 days suspension
of Amusement Permit.

1. Used loudspeakers or devices whereby music
could be heard outside.
November 27, December 10, 13, 14, 27, 2003,
January 22 and March 7, 2004.
2. Noisy and/or disorderly operation.
November 27, December 10, 13, 14, 27, 2003,
January 22 and March 7, 2004.

Adjudication No. 08-1413. Fine \$2,000.00 and R.A.M.P. Training
mandated.

Sales to visibly intoxicated persons.
March 29 and April 27, 2008.

Adjudication No. 09-2263. Fine \$150.00.

Failed to clean coils at least once every 7 days.
January 7 through August 10, 2009.

Adjudication No. 10-0577. Fine \$350.00.

Used loudspeakers or devices whereby music could be
heard outside. February 12 and 13, 2010.

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 Counts 1 and 2 of this case.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 3 of this case.

Counts 1 and 2 merged - Licensee has taken substantial and affirmative steps to ensure that no further amplified sound escapes the premises. I impose a \$450.00 fine.

Count 3 - \$1,400.00 and Licensee must remain RAMP compliant

ORDER

THEREFORE, it is hereby ordered that Licensee SEASONS RESTAURANT & NIGHT CLUB, INC., pay a fine of \$1,850.00 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.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee must remain in compliance for a period of one year from the mailing date of the Order.

Jurisdiction is retained.

Dated this 19TH day of December, 2011.



Felix Thau, A.L.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.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

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. 10-1222
Seasons Restaurant and
Nightclub, Inc.