

Mailing Date: APR 20 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1252C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-404288
v.	:	
	:	LID - 39199
J.B. WINNEE, INC.	:	
2-4 WEST MAIN AVENUE	:	
MYERSTOWN, PA 17067-1021	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. H-AP-SS-105	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 24, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against J.B. WINNEE, INC., License Number H-AP-SS-105 (hereinafter "Licensee").

The citation contains four counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)] in that on December 3, 4, 18, 2009, January 3, 30 and February 13, 2010, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(1) of the Clean Indoor Air Act [35 P.S. §637.6(a)(1)] in that on December 3, 4, 18, 2009, January 3, 30 and February 13, 2010, Licensee, by its servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act.

The third count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on December 18, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one female minor, twenty years of age.

The fourth count 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 3 and February 13, 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 November 25, 2009 and was completed on May 10, 2010; and notice of the violation was sent to Licensee by Certified Mail on June 9, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 10, 2011 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 Horace M. Ehrgood, Esquire, 410 Chestnut Street, Lebanon, PA 17042 by certified mail on January 28, 2011. The notice set forth the date and time of the hearing as March 10, 2011 at 1:00 p.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:

COUNTS 1, 2 AND 4

1. On December 3, 2009 at 11:45 p.m., an officer of the Bureau made an undercover visit to the licensed premises. Upon entry, the officer observed that there was no signage indicating whether smoking was permitted or not permitted on the licensed premises. The officer actually observed patrons smoking. He departed the premises at 12:30 a.m. on December 4, 2009 (N.T. 8).

2. On January 3, 2010, the officer made a second visit to the licensed premises. He arrived at 12:15 a.m. Upon entering, he observed no signs indicating whether smoking was permitted or not permitted on the licensed premises. The officer observed patrons smoking on the licensed premises (N.T. 8-9).

3. On January 3, 2010, the officer observed a jukebox playing music for the entertainment of patrons. The jukebox was amplified by a loudspeaker. The officer departed the premises at 12:55 a.m., and could hear music emanating from the licensed premises at distances up to 104 feet (N.T. 9)

4. On January 30, 2010 the officer again made an undercover visit to the licensed premises arriving at 10:35 p.m. The officer again observed patrons smoking inside the licensed premises, and there were no signs indicating whether smoking was permitted or not permitted on the licensed premises (N.T. 9-10).

5. On February 13, 2010 the officer arrived at the licensed premises at 9:40 p.m. Upon arrival the officer heard music emanating from the licensed premises. He conducted a sound check and could hear the music at distances up to 98 feet. The officer entered the licensed premises and observed that the source of the music was a jukebox. The music from the jukebox was amplified through a loudspeaker (N.T. 10).

6. While on the licensed premises on February 13, 2010, the officer observed no signs indicating whether smoking was permitted or not permitted on the licensed premises. The officer observed patrons smoking on the licensed premises (N.T. 10).

7. The officer departed the licensed premises at 10:20 p.m. on February 13, 2010 and could hear music emanating from the licensed premises at distances up to 114 feet (N.T. 10-11).

8. During the period from December 3, 2009 through February 13, 2010, Licensee had not been granted an exception by the Department of Health pursuant to the Pennsylvania Clean Indoor Air Act to permit smoking in the establishment (N.T. Exhibit C-5).

9. On December 18, 2009, an officer of the Bureau, while on the licensed premises as part of a compliance check detail observed that there were no signs on the licensed premises indicating whether smoking was permitted or not permitted (N.T. 18).

10. On December 18, 2009 the officer observed individuals openly smoking on the licensed premises, and, employes of Licensee were providing ashtrays for the convenience of patrons (N.T. 18).

COUNT 3

11. N.A.P. was born on September 21, 1989, and, on December 18, 2009, she was 20 years old (N.T. 19-20).

12. On December 18, 2009 N.A.P. entered the licensed premises (N.T. 20).

13. Upon entry N.A.P. ordered a six pack of 12-ounce bottles of Budweiser beer. The bartender asked N.A.P. for her driver's license. N.A.P. showed her true and valid driver's license showing her to be 20 years of age. The bartender checked the driver's license and handed it back to N.A.P. and told her the total was \$7.50. N.A.P. handed the bartender \$10.00 and received \$2.50 in change (N.T. 19-20).

14. After paying for the beer, N.A.P. took the beer and left the licensed premises (N.T. 21).

CONCLUSIONS OF LAW:

Counts 1, 2, 3 and 4 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since October 1, 1996, and has had nine prior violations:

Citation No. 00-1708. Fine \$200.00.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Noisy and/or disorderly operation.

Citation No. 01-0788. Fine \$2,250.00.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Noisy and/or disorderly operation.
3. Sales to visibly intoxicated person.
4. Sales between 2:00 a.m. and 7:00 a.m.
5. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sales for consumption off premises.

Citation No. 02-0677. 1 day suspension.

1. Operated the licensed establishment without a valid health permit or license.
On 18 dates between February 22 and March 14, 2002.

Citation No. 03-0279. Fine \$1,000.00.

1. Sold alcoholic beverages during a time when the hotel liquor license was suspended.
February 3, 2003.

Citation No. 03-1333. Fine \$1,300.00.

1. Sales to a visibly intoxicated person.
April 26, 2003.
2. Used loudspeakers or devices whereby music could be heard outside.
April 26, 2003.

Citation No. 07-1247. Fine \$500.00.

1. Used loudspeakers or devices whereby music could be heard outside.
January 26, 27, March 10, April 7 and 28, 2007.

Citation No. 07-2573. Fine \$750.00.

1. Used loudspeakers or devices whereby music could be heard outside.
July 27, 28, and September 15, 2007.

Citation No. 08-0523. Fine \$2,500.00 and R.A.M.P. Training mandated.

1. Used loudspeakers or devices whereby music could be heard outside.
February 3, 2008.
2. Sales to a visibly intoxicated person.
February 3, 2008.

Citation No. 09-2783. Fine \$1,350.00. Fine not paid and license suspended 2 days and thereafter until fine paid. 60 days elapsed and fine not paid, license revoked.

1. Not a bona fide hotel where the public may obtain meals in that there was an insufficient supply of food. December 2008 through June 3, 2009.
2. Operated the licensed establishment without a valid health permit or license. March 1, 2008 through April 30, 2009.
3. Failed to comply with the Order of the Administrative Law Judge mandating RAMP training. March 16 through October 6, 2009.
4. Permitted smoking in a public place where smoking was prohibited. December 31, 2008, January 1, 28, February 6, March 21 and April 3, 2009.
5. Failed to appoint a Board approved full time manager for the licensed premises. December 11, 2008 through October 6, 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 Counts 1, 2 and 4 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 3 of this case.

The record indicates that Licensee's hotel liquor license was revoked at Citation No. 09-2783. Consequently, the penalty in this case will again be license revocation.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. H-AP-SS-105, issued to J.B. WINNEE, INC., be **REVOKED** effective at 7:00 a.m. on Monday, May 9, 2011. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is already revoked there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been **REVOKED**. The Licensee's right to renew his license is hereby CANCELLED.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 12TH day of April, 2011.



Daniel T. Flaherty, Jr., J.

an

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.