

Mailing Date: JUL 11 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1961
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-411535
v.	:	
	:	LID - 32289
MARK F. CARUSO	:	
T/A ANGELO'S	:	
4 N. HENDERSON ST.	:	
LOCK HAVEN, PA 17745	:	
	:	
	:	
CLINTON COUNTY	:	
LICENSE NO. H-AP-SS-5525	:	

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

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on September 16, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MARK F. CARUSO, License Number H-AP-SS-5525 (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 May 7 and 15, 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 April 19, 2010 and was completed on August 26, 2010; and notice of the violation was sent to Licensee by Certified Mail on August 31, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on May 5, 2011 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at his address of record, 4 N. Henderson St., Lock Haven, PA 17745 by certified mail on March 18, 2011. The notice set forth the date and time of the hearing as May 5, 2011 at 9:30 a.m., and the place of hearing as PA Department of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

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 May 7, 2010 an officer of the Bureau arrived at the licensed premises at 10:20 p.m. (N.T. 7).
2. Upon entry the officer observed that entertainment was being provided by a DJ known as C & W Sounds. The music provided by the DJ was amplified through loudspeakers (N.T. 7). The officer left the licensed premises at 10:55 p.m. on May 7, 2010 and could hear music emanating from the licensed premises up to 260 feet away (N.T. 7-8).
3. On May 15, 2010 at 11:43 p.m. an officer of the Bureau arrived at the licensed premises. As soon as he arrived and got out of his vehicle he could hear music playing. He entered the licensed premises paying a \$3.00 cover charge (N.T. 12).
4. Upon entry the officer observed a DJ playing music for the entertainment of patrons. The music was amplified through loudspeakers (N.T. 13).
5. The officer left the licensed premises at 11:50 p.m. and could hear music emanating from the licensed premises at distances up to 400 feet (N.T. 13-14).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since February 25, 1994, and has had fifteen prior violations:

Citation No. 96-0110. Fine \$1,000.00.

1. Sunday sales after 2:00 a.m.

Citation No. 96-2502. 3 days suspension.

1. Sales between 2:00 a.m. and 7:00 a.m.
2. Sunday sales after 2:00 a.m.

Citation No. 00-0166. Fine \$150.00.

1. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises.

Citation No. 05-2775. Fine \$500.00.

1. Sold cigarettes, packages of which did not have affixed thereto Pennsylvania Tax Stamps. August 31, 2005.

Citation No. 07-0459C. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a minor. January 24, 2007.

Citation No. 07-2474. Fine \$1,900.00. Fine not paid and license suspended 4 days and thereafter until fine paid.

1. Sales to visibly intoxicated persons. September 9, 2007.
2. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 07-2806X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 18, 2007.

Citation No. 08-0240X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 20 and December 3, 2007.

Citation No. 08-1410. Fine \$1,250.00 and two days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. May 19, 2008.
2. Sales during a time when the license was suspended. May 19, 2008.

Citation No. 08-2036X. Fine \$350.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 16, 2008.

Citation No. 08-2219. Fine \$1,500.00 and 1 day suspension.

1. Sales to a visibly intoxicated person. August 31, 2008.

Citation No. 08-2603X. Fine \$450.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 22, 2008.

Citation No. 08-2939X. Fine \$500.00.

1. Issued worthless checks in payment for malt or brewed beverages. October 16 and 18, 2008.

Citation No. 09-0091X. Fine \$600.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 14 and December 2, 2008.

Citation No. 10-0891. Fine \$750.00.

1. Permitted smoking in a public place where smoking was prohibited. February 27 and March 6, 2010.
2. Issued worthless checks in payment for malt or brewed beverages. February 12, 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 this case.

This office takes notice that Licensee's license was revoked at Citation No. 10-0891 effective January 6, 2011.

Under the circumstances of this case, the penalty imposed shall be revocation of the license.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. H-AP-SS-5525, issued to MARK F. CARUSO, be **REVOKED** effective with the mailing date of this order. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Since the license is 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.

Dated this 30<sup>TH</sup> day of June, 2011.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

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.**

**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.**