

Mailing Date: JULY 06 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2050
LIQUOR CONTROL ENFORCEMENT	:	
	:	
	:	Incident No. W02-418721
v.	:	
	:	LID - 32612
THE SALOON SINCE 1914, INC.	:	
643-645 N. MAIN ST.	:	
WILKES BARRE, PA 18705-1732	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-972	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 1, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against THE SALOON SINCE 1914, INC., License Number R-AP-972 (hereinafter "Licensee").

The citation contains two counts.

The first 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 September 1, 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 Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)] in that on September 1, 2010, Licensee, by its servants, agents or employes, sold alcoholic beverages after its Restaurant Liquor license expired on August 31, 2010, and had not been renewed and/or validated.

The investigation which gave rise to the citation began on September 1, 2010 and was completed on September 2, 2010; and notice of the violation was sent to Licensee by Certified Mail on September 14, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 14, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 643-645 N. Main St., by certified mail on February 24, 2011. The notice set forth the date and time of the hearing as April 14, 2011 at 9:30 a.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

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 AND 2

1. The restaurant liquor license of Licensee expired on August 31, 2010, and, on September 1, 2010, Licensee did not possess a valid license or have temporary authority to dispense alcoholic beverages (N.T. Exhibit C-5).
2. On September 1, 2010 at 10:40 p.m. an officer of the Bureau arrived in the vicinity of the licensed premises where he found that the window beer lights on the premises were illuminated and he could hear music coming from inside (N.T. 7).
3. The officer parked his car and approached the building. He was 18 feet from the building and could hear very loud music (N.T. 7). The officer entered the licensed premises and determined that the music was being produced by a band playing live music. The band consisted of a vocalist, a keyboardist, two guitars and a drummer. The music was electronically amplified through two speakers (N.T. 7-8).
4. The officer observed about 35 patrons in the licensed premises (N.T. 8).
5. The officer approached the bar and ordered a bottle of Coors Light beer from the bartender. The beer was served to him and he was charged \$2.75. The sale was rung up on the cash register (N.T. 8).

6. The officer identified himself to the doorman on the premises and said that he needed to speak to the principal of Licensee corporation. The doorman said that the gentleman was expecting him and was on his way (N.T. 8).

7. While he was waiting for the principal of Licensee corporation, the officer conducted a sound check and could hear music emanating from the licensed premises at distances up to 390 feet away (N.T. 8-9).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since August 9, 1993, and has had thirteen prior violations:

Citation No. 93-2351. 2 days suspension.

1. Sales between 2:00 A.M. and 7:00 A.M.

Citation No. 01-2014. Fine \$200.00.

1. Sold alcoholic beverages after your Restaurant Liquor License expired on August 31, 2001 and had not been renewed and/or validated. September 6, 2001.

Citation No. 03-0313. Fine \$100.00.

1. Permitted entertainment without an Amusement Permit. January 22 and February 5, 2003.

Citation No. 03-0904. Fine \$200.00.

1. Used loudspeakers or devices whereby music could be heard outside. March 5, 2003.
2. Permitted entertainment without an Amusement Permit. March 5, 2003.

Citation No. 04-0192. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 12, 2003.

Citation No. 04-1877. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. March 5 and May 21, 2004.

Citation No. 05-1664. Fine \$250.00.

1. Fortified, adulterated and/or contaminated liquor.
July 21, 2005.
2. Operated the licensed establishment without a valid health permit or license.
July 21, 2005.

Citation No. 05-2341. Fine \$175.00.

1. Issued worthless checks in payment for malt or brewed beverages. August 26 and September 2, 2005.

Citation No. 06-0135X. Fine \$275.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 18, 2005.

Citation No. 09-1391. Fine \$300.00. Fine not paid
And license suspended for 1 day and thereafter until fine paid.

1. Used loudspeakers or devices whereby music could be heard outside.
May 6, 2009.
2. Failed to post signage required by the Clean Indoor Air Act.
May 6, 2009.
3. Permitted smoking in a public place where smoking was prohibited.
May 6, 2009.

Citation No. 09-1919. Fine \$375.00. Fine not paid
And license suspended 1 day and thereafter until fine paid.

1. Not a bona fide restaurant in that food items were insufficient and/or failed to provide food upon request.
2. Failed to post signage required by the Clean Indoor Air Act.
May 28 and July 15, 2009.
3. Used loudspeakers or devices whereby music could be heard outside.
June 10, 2009.
4. Permitted smoking in a public place where smoking was prohibited.
July 15, 2009.

Citation No. 09-2950. Fine \$450.00. Fine not paid. License revoked.

1. Used loudspeakers or devices whereby music could be heard outside. November 26, 2009.

Citation No. 10-0633. Revocation of license.

1. Used loudspeakers or devices whereby music could be heard outside. March 4, 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 Count 1 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 2 of this case.

This office takes notice that Licensee's license has been previously revoked.

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

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. R-AP-972, issued to THE SALOON SINCE 1914, INC., be **REVOKED** effective with the mailing date of the 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 29TH day of June, 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.

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.