

Mailing Date: SEP 02 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2107
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-418495
v.	:	
	:	LID - 60998
MICHAEL JOHN DREISCH	:	
T/A THE RED HOUSE BAKERY &	:	
DELI	:	
RR 1, BOX 15B	:	
STEVENSVILLE, PA 18845-9709	:	
	:	
BRADFORD COUNTY	:	
LICENSE NO. R-AP-SS-19405	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 7, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MICHAEL JOHN DREISCH, License Number R-AP-SS-19405 (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 4, 2010, Licensee, by his 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 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on September 4, 2010, Licensee, by his servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The investigation which gave rise to the citation began on August 30, 2010 and was completed on September 20, 2010; and notice of the violation was sent to Licensee by Certified Mail on September 21, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 23, 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, RR 1, Box 15B, Stevensville, PA 18845-9709 by certified mail on May 5, 2011. The notice set forth the date and time of the hearing as June 23, 2011 at 2:00 p.m., and the place of hearing as PA Dept. 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:

COUNTS 1 AND 2

1. On September 4, 2010, an officer of the Bureau arrived outside the licensed premises at 10:10 p.m. (N.T. 7).

2. Upon arrival and before he got out of his vehicle, the officer could hear music emanating from the licensed premises. He stayed in his vehicle and drove south of the premises a distance of one-half mile. While sitting in his vehicle he could still hear music from the licensed premises (N.T. 7).

3. The officer returned to the licensed premises at 10:15 p.m. parked his vehicle and started to walk toward the front door of the premises. There was a male patron on the porch of the premises who upon noticing the officer yelled to him, "Who the fuck is this asshole?" He then ran off the porch toward the officer a distance of about 20 feet. As he was coming toward the officer he exhibited lack of balance and a very badly staggered gait. As he came at the officer he was trying to catch himself. When he did get to the officer he actually had to catch himself and hold onto the officer. He was leaning on the officer's body (N.T. 7-8).

4. When the patron was face to face with the officer he said, "Holy shit, dude, you're a big fucker." He then started to apologize and stated he was sorry because he didn't realize how big the officer was. He tried to give the officer a hug and his apology. The officer stopped him and asked him if he was okay and what was going on. The patron walked back toward the premises, and the officer followed him. There was another individual on the porch whom the officer later learned to be the Licensee (N.T. 7-8).

5. The speech of the patron was extremely slurred. He had a very powerful odor of alcohol on his breath. He was hard to understand due to his slurred speech (N.T. 8-9).

6. At the time of the aforementioned incident, the patron was in possession of a bottle of Miller Lite beer (N.T. 9).

7. The officer entered the licensed premises and observed there was a live band performing. The band was called Hook, Line and Sinker. They used multiple electric guitars, speakers, amplifiers and microphones (N.T. 9).

8. The officer approached a female bartender and indicated that he needed to speak to a manager or the Licensee. The bartender then retrieved the Licensee from the porch (N.T. 10).

9. As soon as the Licensee reached the officer he began to apologize for the incident that happened in the parking lot. He indicated that he had already cut off this patron because he realized he was intoxicated. The officer began to explain about the loud music that he could hear a half mile down the road. He indicated that the Licensee needed to cease playing loud music (N.T. 10).

10. The officer pointed out to the Licensee that the patron in question could not be served because he was intoxicated. The Licensee told the officer that they were holding a six pack for him to keep it cold. As he was explaining this to the officer, the officer noted the patron in question handing the bartender money. The bartender handed the patron in question a six pack of beer. The officer asked why the patron was just paying for the beer. The Licensee shrugged his shoulders and said, "I'll talk to him about that." (N.T. 11).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since June 12, 2009, and has had one prior violation:

Citation No. 10-0430X. Fine \$150.00.

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

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$ 250.00 fine

Count 2 - \$1,250.00 fine and mandatory RAMP training

ORDER

THEREFORE, it is hereby ordered that Licensee MICHAEL JOHN DREISCH, pay a fine of \$1,500.00 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 is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the liquor Code [47 P.S. §4-471(d)].

Jurisdiction is retained.

Dated this 29TH day of August, 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.

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. 10-2107
Michael John Dreisch