

Mailing Date: FEB 03 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2117
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-417483
	:	
WRIGHTS SEAFOOD RESTAURANT	:	
LLC	:	LID- 59091
1837 WASHINGTON STREET	:	
HEIDELBERG	:	
CARNEGIE PA 15106-4042	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-14204	:	

BEFORE: JUDGE FRISK

APPEARANCES:

BLCE COUNSEL: Nadia L. Vargo, Esquire
LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 8, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Wright's Seafood Restaurant, LLC, License Number R-AP-SS-14204 (hereinafter Licensee).

The citation contains three (3) 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 May 29, June 19, August 27, 28 and September 5, 2010, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of its 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], in that on May 29, June 19, August 27, 28 and September 5, 2010, its licensed establishment was operated in a noisy and/or disorderly manner..

The third count charges Licensee with violation of Sections 401(a) and 406(a)(1) of the Liquor Code, [47 P.S. §§4-401(a) and 4-406(a)(1)], in that on August 27 and September 5, 2010, Licensee, by its servants, agents or employees, sold furnished and/or gave alcoholic beverages on a portion of the premises not covered by the license.

An administrative hearing was conducted on November 29, 2011, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. The hearing was held ex parte.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on August 11, 2010, and completed its investigation on September 5, 2010 . (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violations disclosed by its investigation in a letter dated September 20, 2010, which was sent by certified mail and received by Licensee on September 22, 2010. (N.T. 11, Exhibit C-1, C-2)
3. The citation was issued on October 8, 2010, and was sent by certified mail and received by Licensee on October 12, 2010. (N.T. 12, Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on October 7, 2011 by first class mail as well as certified mail.
5. The aforementioned certified mailing of the notice of hearing was returned as undeliverable.
6. Licensee is the holder of Restaurant Liquor license Number R-AP-SS-14204 located in Carnegie, Allegheny County, Pennsylvania. Licensee's premises is described as somewhat large with a wrap-around deck which covers the entire rear of the premises and a portion of one side. The rear of Licensee's premises is near a creek. Sand was installed between the rear of the premises and the creek which is referred to as the "beach" area. Also on the "beach" area is a stage.
7. Licensee's premises is located in a community which is approximately 80 percent residential and 20 percent commercial.

COUNTS ONE AND TWO

8. On Saturday, May 29, 2010 at 9:30 p.m., a Heidelberg Borough Police officer was dispatched to Licensee's premises as the result of a complaint alleging that loud music was emanating from Licensee's premises. Upon his arrival at Licensee's premises, the police officer ascertained that the loud music was emanating from a sound system located on the exterior of the premises. The police officer then spoke with Licensee's LLC member, Joseph DeCarlo, regarding the loud music. The police officer further noted that this loud music was audible several blocks away at the Exxon service station. (N.T. 12, 26, 27, 28)

9. On Saturday, June 19, 2010 at 11:30 p.m., a police officer with the Heidelberg Borough Police Department while on patrol, heard the sound of amplified music emanating from a band performing on the exterior of Licensee's premises. The police officer determined that the band was performing through an amplified sound system and was audible several blocks away at the Exxon service station and at the intersection of Route 50 and 2nd Street. The police officer again spoke with Mr. DeCarlo regarding this loud music. (N. T. 29, 30)

COUNTS ONE, TWO AND THREE

10. On Friday, August 27, 2010 at 8:35 p.m., a Liquor Enforcement officer parked her vehicle in a parking lot directly beside Licensee's premises where the sound of loud music could be heard emanating from Licensee's premises. The Enforcement officer walked approximately 100 feet to a fence which surrounded the "beach" area of the premises. The Enforcement officer observed a live band performing on the side of the premises under trees, utilizing an amplified sound system. The Enforcement officer attempted to enter the premises and found the gate area on the fence to be locked. (N.T. 13, 14)

11. The Enforcement officer proceeded around the premises to the side of the wrap-around deck where a chalkboard read, "Bill Toms & Hard Rain." (N.T. 14)

12. The Enforcement officer approached the rear deck and noted that there were approximately 74 patrons present. Approximately 20 additional patrons were observed at a bar set up on the rear portion of the deck. An additional 35 patrons were seated at tables on the "beach." The majority of patrons at these locations were observed in possession of and consuming alcoholic beverages. (N.T. 15, 16)

13. The Enforcement officer noted that in addition to various speakers set up on the stage area where the live band was performing, an additional speaker was mounted on the exterior rear portion of the premises facing the creek. Another speaker was also observed in a pine tree. (N. T. 15)

14. At 8:45 p.m., the Enforcement officer purchased a vodka and tonic mixed drink alcoholic beverage from a female bartender at the outside bar located on the rear deck and paid \$6.00 for this drink. (N. T. 15)

15. Subsequent to this purchase, the Enforcement officer walked the entire beach area and observed numerous patrons consuming alcoholic beverages. (N.T. 16)

16. Shortly after 8:45 p.m., the Enforcement officer departed Licensee's premises, entered her vehicle, and commenced an outside surveillance. The Enforcement officer heard the sound of amplified music emanating from Licensee's premises at distances of approximately 500 feet north at the intersection of Washington and 3rd Streets. The Enforcement officer then exited her vehicle and walked approximately 250 additional feet north where the sound of this amplified music emanating from Licensee's premises continued to be heard. (N.T. 16)

17. The Enforcement officer returned to her vehicle and proceeded south of Licensee's premises at a distance of approximately 600 feet at a Garden Center where the sound of the amplified music emanating from Licensee's premises could still be heard. (N.T. 16-17)

18. At 9:10 p.m., the Enforcement officer parked her vehicle near the intersection of 4th Street and Washington Pike located approximately 300 feet west of Licensee's premises where the sound of this amplified music emanating from Licensee's premises could still be heard. (N.T. 17)

COUNTS ONE AND TWO

19. On Saturday, August 28, 2010 at 9:15 p.m., the Enforcement officer again parked her vehicle in the parking lot next to Licensee's premises and could clearly hear the sound of loud, amplified music emanating from a distance of approximately 100 feet from Licensee's premises. The Enforcement officer exited her vehicle and approached Licensee's premises where she observed a four-piece live band performing at a stage area on the "beach" located behind Licensee's premises. (N.T. 18-19)

20. The Enforcement officer entered the wrap-around deck and noted that the chalkboard read "Bill Deasy \$15." The Enforcement officer further noted that a male located at the top of the deck steps was collecting a \$15.00 cover charge. The Enforcement officer declined paying the cover charge and observed approximately 65 patrons on the deck and approximately 25 patrons seated at tables on the "beach" area. An amplified sound system was also observed set up on the stage located in the "beach" area. A speaker observed underneath a pine tree was actively amplifying loud music. During the course of this visit, the Enforcement officer noted that Licensee had a bar set up in the rear deck area. (N.T. 19-20)

21. The Enforcement officer then conducted an outside surveillance of Licensee's premises and was able to hear the sound of loud, amplified music emanating from Licensee's premises at the same locations as described during her outside surveillance conducted on the previous date of August 27, 2010. (N.T. 20)

COUNTS ONE, TWO AND THREE

22. On Sunday, September 5, 2010 at 5:00 p.m., the Enforcement officer parked her vehicle in a parking lot approximately 50 feet from the fence surrounding Licensee's premises.

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The Enforcement officer heard a pre-recorded Spanish song emanating from the rear portion of Licensee's premises. (N.T. 21-22)

23. On this occasion, the gate to the fence was open and the Enforcement officer proceeded directly onto the deck located at the rear of Licensee's premises. The Enforcement officer noted that some patrons were present on the deck area. (N.T. 22)

24. The Enforcement officer recognized the person tending bar as Licensee's LLC member, Joe DeCarlo. (N.T. 22)

25. At 5:05 p.m., the Enforcement officer purchased a vodka and soda mixed drink alcoholic beverage from Mr. DeCarlo. (N.T. 22)

26. The Enforcement officer observed two speakers attached to the rear of the premises facing the "beach" area. A speaker was also observed above the concrete stage area and in the tree area. All of these speakers were amplifying pre-recorded music. (N.T. 22-23)

27. The Enforcement officer departed Licensee's premises at 5:40 p.m. and noted that a pre-recorded country song was being broadcast through the speakers located on the exterior of Licensee's premises. (N.T. 23)

28. The Enforcement officer could clearly hear the sound of this pre-recorded country song emanating from the rear of Licensee's premises when she returned to her vehicle parked approximately 50 feet outside of the premises. (N.T. 23)

29. Licensee's Restaurant Liquor license does not extend to the exterior deck and "beach" areas and the Board has not otherwise granted authority for the sale, furnishing and/or giving of alcoholic beverages on these exterior areas. (N.T. 24-25, Exhibit C-5)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On May 29, June 19, August 27, 28 and September 5, 2010, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside, in violation of Section 5.32(a) of the Liquor Control Board Regulations, [40 Pa. Code §5.32(a)].

3. On May 29, June 19, August 27, 28 and September 5, 2010, Licensee's establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, [47 P.S. §4-471].

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4. On August 27 and September 5, 2010, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages on a portion of the premises not covered by the license, in violation of Sections 401(a) and 406(a)(1) of the Liquor Code, [47 P.S. §§4-401(a) and 4-406(a)(1)].

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged in Counts One, Two and Three in this Citation by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

PRIOR RECORD:

Licensee has been licensed since November 28, 2007, and has had one (1) prior violations.

Citation No. 10-0616. Fine \$1,300.00 and one (1) day suspension.
In a second Supplemental Order mailed July 14, 2011, Licensee's Restaurant Liquor License was revoked.

1. Violated the tax reform code of 1971, in that you failed and/or refused to remit employer tax and sales tax due and owing. (LL and Tax Reform Code).
April 1, 2009 through January 31, 2010
2. Your sole member pled guilty to violations of Section 7208, Subsection C, of Act 46 of 2003 and was fined m \$378.50. (LL)
November 30, 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 these types found in this case.

The record discloses that Licensee's Restaurant Liquor license was revoked effective July 14, 2011 at Citation No. 10-0616.

For the foregoing reasons, Licensee's Restaurant Liquor license shall be revoked.

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ORDER:

THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. R-AP-SS-14204, issued to Wright's Seafood Restaurant, LLC, be **REVOKED** for administrative purposes 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 inactive, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

Jurisdiction is retained to ensure compliance with this order.

Dated this 31ST day of January, 2012.



Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE 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.