

Mailing Date: SEP 20 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2134
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-416983
	:	
BREAD N BUTTER CATERING INC.	:	
520 LINCOLN ST.	:	LID - 57249
OXFORD PA 19363-1522	:	
	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. R-AP-SS-EHF-11709	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 12, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Bread N Butter Catering, Inc., License Number R-AP-SS-EHF-11709 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, April 14, 2011, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

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 August 21, 2010, Licensee, by its servants, agents or employees, 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 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 21, 2010, Licensee, by its servants, agents or employees, sold malt or brewed beverages for consumption off premises.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. On Saturday, August 21, 2010 at approximately 6:00 p.m., an officer from the Bureau of Enforcement visited the licensed premises. When the officer arrived in the area, he and another officer from the Bureau met with an actual police officer and informed him that they would be at the licensed premises (N.T. 7-8).
2. Two Bureau officers entered the premises and went to the rear of the premises where numerous people were gathered (N.T. 8).
3. The rear of the premises consists of a deck area and parking lot where tables were set up. There was a band playing on the back deck. The deck is part of the licensed premises and is attached to the building (N.T. 9).
4. The tables were set up in the back area and in the rear parking lot (N.T. 9).
5. The officer observed approximately seventy-five patrons in the rear of the premises. There was a band on the deck playing rock music. The equipment consisted of microphones, speakers, guitars and drums. The officer saw approximately two speakers in the outside area (N.T. 10).
6. There were servers in the rear of the premises serving food to patrons who were seated outside. The officer stopped one of them and asked them if they could order a beer. She informed him that this was an unlicensed area and they would have to go to the deck or inside the premises in order to obtain alcoholic beverages (N.T. 11).

7. On the deck there was a cooler full of beer. He approached a server and obtained beer (N.T. 11).

8. At approximately 7:25 p.m., the officer entered the bar area inside the building. The officer ordered a Red Bull and vodka which is a mixed alcoholic beverage. The bartender questioned him as to whether it was for inside or outside. He told them it was for outside and it was served to him in a plastic cup. He paid \$6.50 for the drink. He gave the bartender a ten dollar bill, left him a dollar tip and exited with the cup in his hand (N.T. 12).

9. The officer returned to the table. They were occupied in the parking lot (N.T. 12).

10. During this time, the deck music was projected from the speakers. The officer paced off approximately 100 feet from the rear area to an area, which was close to a driveway of a residential address. He could still hear the music "very, very, very" clearly (N.T. 12-13).

11. The officer noted the same music that he had heard while he was in the parking lot of the premises (N.T. 13).

12. The officer departed the premises at 8:30 p.m. (N.T. 14).

13. An attestation from the Bureau of Enforcement indicates three outside serving areas with the dimensions of 31' by 26', 7' by 23' and 35' by 9'. The officer stated that the dimensions of the parking lot were at least 100' by 20' or 30' (N.T. 20).

14. None of these were consistent with the licensed serving areas (N.T. 20 and Exhibit B-1).

15. Kathleen Widdoes indicated that the policy is that inside drinks are served in glasses and outside drinks are served in plastic cups (N.T. 21-22).

CONCLUSIONS OF LAW:

Count No. 1 - On August 21, 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a).

Count No. 2 - On August 21, 2010, Licensee, by its servants, agents or employes, sold malt or brewed beverages for consumption off premises, 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).

Bread N Butter Catering, Inc.
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PRIOR RECORD:

Licensee has been licensed since November 17, 2006, and has no record of prior violations.

DISCUSSION:

The music which was played on the outside deck could be heard at a distance of 100 feet from the licensed premises and was in violation of the regulations. In addition, Licensee sold liquor for consumption off the premises in that they sold liquor in a licensed area which they permitted to be consumed in an unlicensed area. Although they did not allow service of alcoholic beverages on the unlicensed area, they did provide plastic cups and did not prohibit patrons from removing the liquor from the licensed area to an unlicensed area.

Under the circumstances, a monetary penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$400.00.
Count No. 2 - \$250.00.

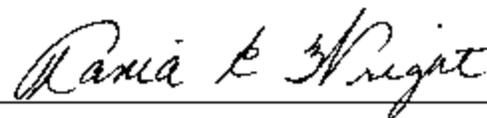
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Bread N Butter Catering, Inc., License Number R-AP-SS-EHF-11709, pay a fine of Six Hundred Fifty Dollars (\$650.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Jurisdiction of this matter is retained.

Dated this 16TH day of September, 2011.



Tania E. Wright, J.

Bread N Butter Catering, Inc.
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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.

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Detach Here and Return 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.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

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