

Mailing Date: APR 07 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2489
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-420281
v.	:	
	:	LID - 46679
SHANK'S TAVERN, INC.	:	
T/A SHANK'S TAVERN	:	
36 S. WATERFORD AVE.	:	
MARIETTA, PA 17547-1403	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-SS-15844	:	
	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** John H. Pietrzak, Esquire  
**LICENSEE:** John F. Markel, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on November 24, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Shanks Tavern, Inc., t/a Shank's Tavern (Licensee), License Number R-AP-SS-15844.

The citation<sup>1</sup> charges Licensee with a violation of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on October 9, 2010, Licensee, by servants, agents or employes, 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.

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1. Commonwealth Exhibit No. C-2, N.T. 7.

An evidentiary hearing was conducted on March 4, 2011 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on October 9, 2010 and completed it on November 4, 2010. (N.T. 8)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 12, 2010. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

3. On October 9, 2010, a Bureau Enforcement Officer was in the Marietta area. There was an event called: "The Marietta Pub Crawl." All of the licensed establishments were participating. At 7:55 p.m., the Officer made his way towards the licensed premises as he heard music which he thought was coming from within. The Officer continued to walk to the premises. He verified the source of the music was the licensed premises. The Officer paced approximately 150 feet west of the premises at which point, he heard the music which was coming from the licensed premises. (N.T. 9-10)

4. The Officer was unable to enter through the main entrance as the premises was crowded. He noticed there was a side entrance where he was able to gain entry to the premises. It was so crowded inside that the Officer had to force his way through the crowd. He noticed there was a band performing. The band used an amplification system. Because of the crowd, the Officer could not go any closer. He departed at 8:05 p.m. At a distance of 128 feet west of the building, he no longer heard the amplified music. (N.T. 11-13)

5. On November 4, 2010, Licensee's Sole Corporate Officer, Mr. S. called the Officer. Mr. S. was very courteous. He advised the Officer he would do whatever was necessary to correct the problem. (N.T. 14)

6. The "Pub Crawl" has been an annual event for eight years. Licensee participates but closes its premises at 10:00 p.m. Licensee closes earlier than the remaining establishments because Licensee has no interest in dealing with rowdy patrons who had too much to drink. (N.T. 32-35)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since September 22, 2000, and has had one prior violation (N.T. 57-58):

Adjudication No. 06-0904. Fine \$300.00.  
Used loudspeakers or devices whereby the  
sound of music could be heard outside.  
February 16 and 23, 2006.

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.

I well recognize Licensee is an operator who chooses to forego profits in order to comply with the law. I believe I am obliged to consider that as a mitigating factor. I also consider, there was no complaint for a violation of the loudspeaker regulation that brought the Officer to the community. Accordingly, I impose a \$150.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$150.00 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.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 1<sup>ST</sup> day of April, 2011.



Felix Thau, A.L.J.

pm

**NOTICE: 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.**

Detach Here and Return Stub with Payment

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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 to:

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

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SHANK'S TAVERN, INC.