

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2531
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-416074
	:	
v.	:	
	:	LID - 62153
	:	
REDNECKS BAR & GRILL LLC	:	
771 OLD ROUTE 71	:	
CHARLEROI PA 15022-3039	:	
	:	
	:	
	:	
WASHINGTON COUNTY :	:	
LICENSE NO. R-AP-SS-14367	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily Gustave, Esquire
LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 10, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Rednecks Bar & Grill, LLC, License Number R-AP-SS-14367 (hereinafter Licensee).

The citation contains two counts.

The first 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 July 28, 2010, Licensee, by its servants, agents or employees, sold alcoholic beverages after its Restaurant Liquor license expired on June 30, 2010, and had not been renewed and/or validated.

REDNECKS BAR & GRILL, LLC

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The second 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 24, 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.

An administrative hearing was conducted on May 17, 2010, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee did not appear personally or through legal counsel.

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 July 14, 2010, and completed its investigation on November 6, 2010. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated November 10, 2010, which was sent by certified mail and received by Licensee on November 12, 2010. (Exhibit C-2)
3. The citation was issued on December 10, 2010, and was sent by certified mail and received by Licensee on December 17, 2010. (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 April 4, 2011 by first class mail as well as certified mail.
5. The aforementioned certified mailing of the notice of hearing was returned unclaimed. The first class mailing was not returned.

COUNT 1

6. Licensee's restaurant liquor license expired on June 30, 2010, and Licensee had no authority to operate until its liquor license was renewed on August 13, 2010. (N.T. 10-11, Ex. C5)

7. On Wednesday, July 28, 2010, at 10:00 p.m., a Liquor Enforcement officer entered Licensee's premises in an undercover capacity and observed a female referred to as "Kim" tending bar and rendering service of alcoholic beverages to approximately 17 patrons. (N.T. 10)
8. Shortly after entering, the Enforcement officer purchased a mixed drink consisting of vodka and diet soda from bartender "Kim" and paid \$2.25, which transaction was recorded on the cash register located behind the bar. (N.T. 10)

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9. During the course of this visit, the Enforcement officer noted that various patrons purchased and consumed alcoholic beverages on the premises. (N.T. 10-12)
10. The Enforcement officer departed Licensee's premises at 10:40 p.m., with the patronage remaining consistent throughout this visit. (N.T. 11)

COUNT 2

11. On Friday, September 24, 2010, the Enforcement officer arrived at Licensee's premises at approximately 10:55 p.m. and parked her vehicle in the parking lot which services Licensee's premises. The Enforcement officer walked around Licensee's premises and was able to hear the sound of an acoustic guitar and male voice singing "Wonder Wall" by Oasis" at distances of approximately 50 feet around the premises. (N.T. 13-14)

12. The Enforcement officer entered Licensee's premises in an undercover capacity at 11:00 p.m. and observed a female bartender heard to be called "Amy" rendering service of alcoholic beverages to approximately 25 patrons. Entertainment was being provided by a male singer who was playing an amplified acoustic guitar. The singer's voice and guitar were amplified through a sound system set up on the premises. (N.T. 14)

13. The Enforcement officer departed Licensee's premises at 11:25 p.m., and continued an outside surveillance. During the course of this surveillance, the Enforcement officer heard the sound of this amplified music emanating from Licensee's premises at distances of up to 70 to 75 feet in front of some residences. (N.T. 15)

14. Licensee's establishment is located in a community which is wooded and predominantly residential. (N.T. 15)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4471] have been satisfied.

2. On July 28, 2010, Licensee, by its servants, agents or employees sold alcoholic beverages after its Restaurant Liquor license expired on June 30, 2010, and had not been renewed and/or validated, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code.

3. On September 24, 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.

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DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violations as set forth in Counts one and two of 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 October 9, 2009, and has had one prior violation, to wit:

Citation No. 10-1404C. Fine \$1,250.00 and R.A.M.P.
training mandated.

1. Sales to a minor.
June 15, 2010.

PENALTY:

With respect to Count one, 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 a violation of the type found in this case. As to Count two, Section 471 of the Liquor Code 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 a violation of this type.

Licensee's failure to submit a pre-hearing memorandum and its failure to appear at the administrative hearing demonstrates a clear lack of interest in this liquor license.

For the foregoing reasons, the following penalties shall be imposed:

Count one - \$2,000.00.

Count two - \$500.00.

ORDER:

THEREFORE, it is hereby ordered that Rednecks Bar & Grill, LLC, License Number RAP-SS-14367, pay a fine of \$2,500.00 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.

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Jurisdiction is retained.

Dated this 15TH day of JUNE, 2011.



Roderick Frisk, J. bg

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.

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 to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza

2221 Paxton Church Road
Harrisburg PA 17110-9661

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