

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. 11-0169
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-421147
v.	:	
	:	LID - 56597
MOES, INC.	:	
T/A HARRINGTON BAR & GRILLE	:	
410 LOCUST ST.	:	
COLUMBIA, PA 17512-1250	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-SS-2830	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 10, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MOES, INC., License Number R-AP-SS-2830 (hereinafter "Licensee").

The citation contains three 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 November 27, December 10 and 11, 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.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on December 10, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated patron.

The third count charges Licensee with violation of Section 404 of the Liquor Code [47 P.S. §4-404] in that on November 27, December 10 and 11, 2010, Licensee, by its servants, agents or employes, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

The investigation which gave rise to the citation began on October 20, 2010 and was completed on December 29, 2010; and notice of the violation was sent to Licensee by Certified Mail on January 26, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 14, 2011 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 410 Locust Street, Columbia, PA 17512-1250 by certified mail on May 27, 2011. The notice set forth the date and time of the hearing as July 14, 2011 at 2:30 p.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

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, 2 AND 3

1. On July 7, 2010 Licensee entered into a Conditional Licensing Agreement (CLA) with the Board (N.T. Exhibit C-5).

2. Paragraph 7(b) of the aforementioned CLA provides as follows:

“On all Thursday, Friday and Saturday evenings from 6:00 p.m. until closing, Moe’s shall have at least two security persons attired so as to easily identify the person’s security function and authority, patrol the interior and exterior of the premises to prevent illegal activity from occurring. Security personnel must conduct metal detection wand and/or pat down searches of each and every patron entering the establishment to prevent weapons or contraband from entering the premises. In addition, not less than once per hour, at least one security person shall patrol the entire exterior of the premises. Moe’s shall maintain a record of such patrols and such records shall be deemed a business record subject to Section 493(12) of the Liquor Code.”

(N.T. Exhibit C-5).

3. Section 7(c) of the aforementioned CLA provides as follows:

“Moe’s shall use a transaction scan device as that term is defined in the Liquor Code to scan the identification of all patrons under the age of 30 entering the premises, notwithstanding the fact that the patron may have had his or her identification scanned on a previous occasion. For the purposes of this Section, “occasion” shall mean from 7:00 a.m. until 2:00 a.m. the following day.”

4. On November 27, 2010 at 1:25 a.m., an officer of the Bureau arrived in the vicinity of the licensed premises. She parked her state vehicle approximately 75 feet away from the licensed premises. From this point she was able to detect music. The officer conducted a sound check and was able to hear music emanating from the licensed premises at distances up to 125 feet away (N.T. 11-12).

5. The officer entered the licensed premises and paid a cover charge. She observed a man by a round table who was asking for money for the cover charge who was wearing a security t-shirt. At the same table the officer observed a yellow and black metal detector and there was also a yellow ID swipe device (N.T. 12-13).

6. The officer proceeded into the licensed premises without having her identification checked or being wanded or patted down (N.T. 12-13).

7. The officer took a seat and ordered an alcoholic beverage. While she was on the licensed premises, the officer observed approximately 20 patrons enter the premises. She did not observe any one of them have their identification checked, scanned or swiped. No one was patted down (N.T. 13-14).

8. The officer identified the source of the music that she heard outside as emanating from a dance room. The music was amplified through loudspeakers operated by a DJ using a sound mixing board (N.T. 14).

9. At 1:50 a.m. on November 27, 2010 last call was given. The interior lights were turned up. The officer did not observe any employees present that were attired wearing clothes that identified them as security personnel (N.T. 14).

10. On December 10, 2010 at 11:45 p.m. the officer arrived at the premises. She parked about 300 feet from the premises. She could hear music emanating from the premises as she drove by (N.T. 14-15).

11. The officer conducted a sound check and could hear music emanating from the licensed premises at distances up to 300 feet (N.T. 15).

12. At 11:50 p.m. the officer entered the licensed premises in an undercover capacity. She was required to pay a cover charge. This was given to a doorman who had a t-shirt on which had the word "Security" printed on it. (N.T. 16).

13. On this occasion, when the officer entered the building she had her gun, her badge, mace and handcuffs with her. She was not wanded down or patted down. She was not asked for identification. Her identification was not swiped or scanned (N.T. 16-17).

14. During this visit the officer observed at least 60 patrons enter the premises. None of them had their identification checked, scanned, swiped and nobody was patted down or wanded (N.T. 17).

15. The officer identified the source of the music she had heard outside as emanating from the dance area. There were two large cabinet speakers being operated by a DJ using a sound mixing board (N.T. 17-18).

16. The attention of the officer was drawn to a male patron who was staggering and stumbling around. He was swaying and yelling and screaming. The officer noted that he had an empty cup and an empty pitcher (N.T. 18-19).

17. The aforementioned patron was standing but swaying severely. He was holding onto the bar to keep himself steady. Eventually, the officer asked him what he was drinking, and he introduced himself as Terence. The officer noted that his eyes were bloodshot. His entire body had the odor of alcohol, and he slurred his speech as he spoke (N.T. 19).

18. Terence told the officer he was drinking Yuengling and had been drinking Yuengling all day. He very loudly said that he was "fucked up" and very drunk. He also said that he was not only very fucked up and drunk but he was also high. He had been drinking all day long. He was yelling this information to the officer (N.T. 19).

19. Terence told the officer he wanted to go play pool. He had been playing pool and then he had lost a game and was waiting. As he was waiting he tried to get another drink from the bartender. He waived his arms and yelled and screamed, but this did not work. At one point he took his fist and repeatedly banged and yelled, "Cher, Cher, Cher; I need a beer; I need a beer." He also said that he was "fucked up" and he was drunk and he was probably too drunk to play pool but he was going to play pool anyway (N.T. 20).

20. The bartender Cher served Terence another pitcher of Yuengling draft beer from a tap behind the bar. She brought the pitcher to him and took all the money that was in front of him which was at least \$17.00 (N.T. 20).

21. When Terence went to pour beer into his glass he had a lot of difficulty. He over filled the glass which then foamed up. He put it up to his mouth and the beer was falling onto his face. It spilled over onto the bar (N.T. 20).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since June 9, 2006, and has had three prior violations:

Citation No. 08-0720. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside. August 3, October 13, 2007 and January 5, 2008.

Citation No. 09-2311. Fine \$250.00.

1. Operated the licensed establishment without a valid health permit or license. July 20 through August 11, 2009.

Citation No. 10-2151. Fine \$1,000.00.

1. Used loudspeakers or devices whereby music could be heard outside. August 21, 26, September 2 and 3, 2010.
2. Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license. August 20, 21, 26, September 2, 3 and 5, 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 Counts 1 and 3 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.

If at the time of the violation, the licensee was in compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to Responsible Alcohol Management and the licensee had not sold to visibly intoxicated persons in the previous four years, Liquor Code Section 471(b) [47 P.S. §4-471(b)] provides for a fine structure of \$50.00 to \$1,000.00.

This office takes notice that Licensee became RAMP certified effective October 18, 2010.

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

- Count 1 - \$750.00 fine
- Count 2 - \$750.00 fine and Licensee remain RAMP compliant
- Count 3 - \$1,000.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee MOE'S, INC., 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.

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 must remain in compliance for a period of one year from the mailing date of the Order.

Jurisdiction is retained.

Dated this 16TH day of September, 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. 11-0169
Moe's, Inc.