

Mailing Date: MAR 12 2012

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

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|----------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 11-0260 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W09-424706 |
| v. | : | |
| | : | LID - 62389 |
| FREDDY'S PUB LLC | : | |
| 14-16 MAUCH CHUNK ST | : | |
| TAMAQUA PA 18252-1405 | : | |
| | : | |
| SCHUYLKILL COUNTY | : | |
| LICENSE NO. R-AP-SS-2649 | : | |

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: Larry Fredrick

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 25, 2011. There are two counts in the citation.

The first count alleges that Licensee violated §§406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), on January 9, 2011, by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The second count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on January 9, 2011, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

A hearing was held on Friday, February 3, 2012 in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On January 9, 2011, liquor enforcement officers entered the licensed premises at about 1:15 a.m. and ordered drinks. A jukebox inside the premises began to play music through

loudspeakers. At about 1:32 a.m., one of the officers left the premises and heard the music outside, at distances as great as 120 feet (N.T. 6-7, 13-14).

2. At 2:20 a.m., one of the bartenders gave a bottle of Labatt Blue beer to a patron. She said that she had already opened it, and a prior patron didn't want it. About five minutes later, a man behind the bar took two six-packs of beer from a cooler and put them in white plastic bags, then took the bags out of the premises, using a side entrance door (N.T. 7-8, 18-19).

CONCLUSIONS OF LAW:

Licensee violated §§406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), on January 9, 2011, by furnishing alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on January 9, 2011, by permitting the use on the inside of the licensed premises of a loudspeaker, whereby music could be heard outside.

DISCUSSION:

I accept the testimony of Licensee's president that it is not their policy to furnish alcoholic beverages after 2:00 a.m., and that the Labatt's was given to him because it had already been opened and the customer to whom it was initially served didn't want it. The identity of the person to whom the beer was delivered doesn't matter. The violation is for delivering (not selling) alcoholic beverages after 2:00 a.m.

The two six-packs may have been purchased before 2:00 a.m., but if so, they should also have been delivered at the same time. In that case, the purchasing customer could have retained possession of the beer inside the premises until 2:30 a.m., but this is not what happened. Six-packs of beer in the cooler of the licensed premises are in Licensee's possession, and cannot be delivered after 2:00 a.m.

PRIOR RECORD:

Licensee has been licensed since January 12, 2010, and has had prior violations as follows:

Citation No. 10-1111. \$1,300.00 fine and R.A.M.P. – certification mandated.

1. Sales to a visibly intoxicated person. April 2, 2010.
2. Loudspeakers could be heard outside. April 4 and 15, 2010.

Citation No. 10-2241C. \$1,250.00 fine.

1. Sales to a minor. August 12, 2010.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in the first count, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in the second count, any fine must be in the \$50.00 to \$1,000.00 range. Since this is Licensee's third violation in a four-year period of a provision mentioned in 47 P.S. §4-471(b), the law requires that the penalty include license suspension or revocation.

Penalties are assessed as follows:

- Count 1 – Suspension of license for one day.
- Count 2 – a fine of \$200.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Freddy's Pub, LLC, License No. R-AP-SS-2649, shall pay a fine of two hundred dollars (\$200.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Licensee, Freddy's Pub, LLC, License No. R-AP-SS-2649 shall be suspended for a period of one (1) day BEGINNING at 7:00 a.m. on Monday, June 4, 2012, and ENDING at 7:00 a.m. on Tuesday, June 5, 2012.

Licensee is directed on Monday, June 4, 2012, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Tuesday, June 5, 2012, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 2ND day of MARCH, 2012.


David L. Shenkle, J.

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.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 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