

Mailing Date: OCT 04 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0383
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-425612
v.	:	
	:	LID - 56694
TRIPLE K SALOON, LLC	:	
577-579 MAIN ST.	:	
KINGSTON	:	
EDWARDSVILLE, PA 18704-2507	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-3972	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 11, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against TRIPLE K SALOON, LLC, License Number R-AP-SS-3972 (hereinafter "Licensee").

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 February 5, 2011, 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 Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)] in that on February 5, 2011, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The investigation which gave rise to the citation began on February 1, 2011 and was completed on February 5, 2011; and notice of the violation was sent to Licensee by Certified Mail on February 22, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 27, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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, 577-579 Main St., Kingston, Edwardsville, PA 18704-2507 by certified mail on June 9, 2011. The notice set forth the date and time of the hearing as July 27, 2011 at 2:45 p.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

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 AND 2

1. On February 5, 2011 at 1:10 a.m., an officer of the Bureau arrived in the area of the licensed premises (N.T. 7).

2. The officer parked his vehicle approximately 120 feet away from the licensed premises. As he walked towards the premises he heard loud music emanating from inside. He then went to the entrance of the licensed premises and conducted a sound check. He could hear music emanating from the licensed premises at distances up to 90 feet from the entrance (N.T. 7-8).

3. At 1:15 a.m. the officer entered the licensed premises where he observed a DJ using the name Johnny Diamond who was providing karaoke for the entertainment of patrons. The music for the karaoke was amplified through a loudspeaker (N.T. 8-9).

4. The officer observed that at 1:45 a.m. last call was given. The officer ordered a Coors Light bottle and was given a little plastic cup by the barmaid. The little cup was placed in front of the officer upside down to signify that he had another drink coming (N.T. 9).

5. At 1:45 a.m. a male patron came into the licensed premises and ordered a Yuengling draft beer. The barmaid gave him a Yuengling draft beer. She then said to this patron that it was last call. He bought two back-ups for the Yuenglings, and the barmaid put two little plastic cups in front of this patron (N.T. 9-10).

6. The barmaid went around the bar from 1:45 a.m. to 1:55 a.m. and gave everyone a chance for last call. Most of the patrons got plastic cups and some got actual alcoholic beverages.

7. Right after 2:00 a.m., the officer ordered a Coors Light bottle of beer. About five minutes after 2:00 a.m. the barmaid served him the beer (N.T. 10).

8. Shortly after 2:00 a.m., two male patrons and a female patron ordered two shots of vodka and a shot of McGillicuddy. The barmaid poured out the shots of vodka and served them to the patrons (N.T. 10-11).

9. At 2:15 a.m. the patron who walked in at 1:45 a.m. and ordered the Yuengling draft was given another beer. The barmaid took one of the plastic cups (N.T. 11).

10. At 2:20 a.m., a female patron seated on the right side of the bar was given a Miller Lite beer. A plastic cup was taken for this service (N.T. 11).

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since September 15, 2006, and has had three prior violations:

Citation No. 09-1456. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside. May 3, 2009.

Citation No. 09-2078. Fine \$200.00.

1. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises. August 14, 2009.

Citation No. 10-1753. Fine \$300.00.

1. Used loudspeakers or devices whereby the sound of music could be heard outside. June 11, 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 Count 1 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.

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

Count 1 - \$ 400.00 fine
Count 2 - \$1,250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee TRIPLE K SALOON, LLC, pay a fine of \$1,650.00 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.

Jurisdiction is retained.

Dated this 23rd day of September, 2011.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

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. 11-0383
Triple K Saloon, LLC