

Mailing Date: OCT 20 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0459
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-422390
v.	:	
	:	LID - 62153
REDNECKS BAR & GRILL LLC	:	
771 OLD ROUTE 71	:	
CHARLEROI PA 15022-3039	:	
	:	
	:	
WASHINGTON COUNTY	:	
LICENSE NO. R-AR-SS-14367	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Michael Nickles, Esquire
LICENSEE COUNSEL: No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 23, 2011, 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 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 18, 2011, 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 September 12, 2011, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee was not present.

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 November 17, 2010, and completed its investigation on February 20, 2011. (Exhibit C-1)

2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated March 4, 2011, which was sent by certified mail and was unclaimed and returned to sender on March 28, 2011. (Exhibit C-2)

3. This citation was issued on March 23, 2011, and was sent by certified mail to Licensee and was unclaimed and returned to sender on April 16, 2011. (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 July 28, 2011, by first class mail as well as certified mail.

5. The aforementioned certified mailing of the notice of hearing was returned unclaimed.

6. On Friday, February 18, 2011, at 10:55 p.m., a Liquor Enforcement Officer entered Licensee's premises in an undercover capacity and observed a female bartender rendering service to approximately 15 patrons. The Enforcement officer further noted that a disc jockey was providing entertainment through an amplified sound system setup on the premises. (N.T. 10-11)

7. The Enforcement officer departed Licensee's premises at 11:45 p.m., crossed Old Route 71 approximately 30 feet from Licensee's premises and stood in front of three homes where she heard the sound of amplified music emanating from within the premises. (N.T. 11)

8. Licensee's premises is located in a community which is approximately 75% residential and 25% rural. (N.T. 11-12)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On February 18, 2011, 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, [40 Pa. Code §5.32(a)].

DISCUSSION:

At the Administrative hearing held ex parte, this court is of the opinion that the Bureau established the violation as charged 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 two (2) prior violation(s) 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.

Citation No. 10-2531. Fine \$2,500.00.

1. Sales after the license expired and had not been renewed and/or validated.
July 28, 2010.
2. Used loudspeakers or devices whereby the sound of music could be heard outside.
September 24, 2010.

REDNECKS BAR & GRILL, LLC.

Citation Number 11-0459

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.

The record discloses the Licensee has had a prior violation of this type at Citation No. 10-2531. Accordingly, Licensee shall be treated as a repeat offender.

This court is of the opinion that the nature of this violation is a significant one, in that those individuals who reside or conduct their businesses within the community have the right to proceed with their personal and/or business affairs without the intrusion of such "noise pollution."

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, a penalty shall be imposed in the amount of \$600.00.

ORDER:

THEREFORE, it is hereby ordered that Rednecks Bar & Grill, LLC, License Number R-AP-SS-14367, pay a fine of \$600.00 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 to ensure compliance with this Order.

Dated this 4TH day of OCTOBER, 2011.



Roderick Frisk, J.

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REDNECKS BAR & GRILL, LLC.

Citation Number 11-0459

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 Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** 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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Rednecks Bar & Grill, LLC