

Mailing Date: SEP 11 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 11-1782
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-433590
	:	
v.	:	
	:	
	:	PLCB LID - 55458
YORK EAGLE, INC.	:	
T/A THE EAGLES NEST	:	PLCB LICENSE NO. R-AP-SS-15104
2519 MT. ROSE AVE.	:	
YORK, PA 17402-9202	:	

ADJUDICATION

**BEFORE JUDGE THAU
BUREAU COUNSEL PIETRZAK
LICENSEE: L.C. HEIM, ESQUIRE**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 20, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against YORK EAGLE, INC., License Number R-AP-SS-15104 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 404 of the Liquor Code [47 P.S. §4-404] in that on July 16, 22, August 12 and 24, 2011, 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 July 15, 2011 and was completed on September 14, 2011; and notice of the violation was sent to Licensee by Certified Mail on September 27, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 19, 2012 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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:

1. On the dates charged, in an outdoor licensed area, Licensee maintained an illuminated water feature in the center. There was also a speaker from which “mood music” emanated. The music was not particularly loud. The lights were not particularly bright (N.T. 9-19).

2. Licensee installed the lighting and sound system prior to signing the Conditional Licensing Agreement (N.T. 22).

3. Licensee’s representative and the Chief Counsel of the Pennsylvania Liquor Control Board, on behalf of the Pennsylvania Liquor Control Board entered into a Conditional Licensing Agreement which was effective prior to the dates in controversy. In pertinent part, the Conditional Licensing Agreement provides (N.T. 5 and Exhibit C-3):

5.b. YEI shall not install or utilize any additional electrical lighting to the currently existing nine (9) post lights in place in reference to the outside serving area; and

5.c. YEI shall not provide entertainment of any sort, at any time on the outside serving area.

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

Licensee’s first point is that the lighting and the music was of such low intensity that no neighbor could have been disturbed. Licensee further argues that “entertainment,” within the meaning of the Conditional Licensing Agreement, does not include low level “mood music.” In support, Licensee points to Liquor Code Section 493(10) [47 P.S. §4-493(10)] as well as Title 40 Pa. Code, Subchapter C, relating to amusement and entertainment. Counsel argues that the Liquor Code and pertinent regulations define [the meaning of] entertainment to exclude that which occurred on the licensed premises.

The pertinent references clearly define the requirements for an amusement permit. However, nowhere in those references is there a definition for entertainment. Moreover, even if Licensee’s position were correct, there is nothing in the Conditional Licensing Agreement that hints at an intention to incorporate by reference the statutory and regulatory provisions to which Licensee’s counsel directs.

Always looking first to a contract’s plain language, it is quite clear the ambient music Licensee provided, is entertainment.

PRIOR RECORD:

Licensee has been licensed since October 4, 2005, and has had one prior violation:

IN RE:

Citation No. 09-1640. Fine \$300.00.

1. Smoked and/or permitted smoking in a public place where smoking was prohibited. May 22, 2009.

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.

I well recognize Licensee violated the Conditional Licensing Agreement's letter rather than its spirit. Accordingly, I impose a \$100.00 fine.

ORDER

THEREFORE, it is hereby ordered that Licensee YORK EAGLE, INC., pay a fine of \$100.00 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 31ST day of August, 2012.



Felix Thau, ALJ

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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

IN RE: CITATION NO. 11-1782
YORK EAGLE, INC.