

Mailing Date: APR 13 2012

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

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Docket No.: 11-2084
ENFORCEMENT (BLCE)	:	
	:	
v.	:	BLCE Incident No.: W03-434922
	:	
FLINCHY'S, LLC	:	
T/A FLINCHY'S	:	PLCB LID No.: 52004
1833 HUMMEL AVE.	:	
CAMP HILL, PA 17011-5941	:	
	:	PLCB License No.: R-AP-SS-18650
	:	
	:	
CUMBERLAND COUNTY	:	

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Dawson Flinchbaugh, Member  
Matthew Flinchbaugh, Member

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation, containing one count, that was issued on December 15, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Flinchy's, LLC (Licensee).

The citation charges Licensee with violations of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that Licensee, by your servants, agents, or employees, used, or permitted to be used on the inside/outside of your licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside, on August 20, September 30 and October 14, 2011.

I presided at an evidentiary hearing on January 31, 2012 at the Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau complied with the applicable and investigatory notice requirements of the Liquor Code. (N.T. 7)
2. On the dates charged, Licensee permitted amplified music to escape the premises. The amplified sound was provided in an outside deck area. (N.T. 12)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The violations are sustained as charged.

ADJUDICATION HISTORY:

Licensee has been licensed since October 24, 2003, and has the following Adjudication history:

Docket No. 04-1911. Fine \$250.00.  
Permitted dancing and/or entertainment without an  
Amusement Permit on July 21, 2004.

Docket No. 05-1134. Fine \$1,250.00.  
Sales to a visibly intoxicated person on April 24, 2005.

Docket No. 06-2170. Fine \$250.00.

Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. on August 13, 2006.

Docket No. 10-1361X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages on April 16, 2010.

Docket No. 10-1861. Fine \$1,000.00 and Amusement Permit suspended 7 days.

Used loudspeakers or devices whereby the sound of music could be heard outside on July 29, 2010.

PENALTY ASSESSMENT CRITERIA:

**Mandatory Requirement(s)**

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 the violations found herein.

**Discretionary Component(s)**

Licensee has actively sought the municipality's assistance in seeking an exemption from the regulation in question, but has yet to be successful. The licensed premises is located in an industrial area, near train tracks. Interstate 581 passes overhead, close by the premises.

In the prior Adjudication, (Docket No. 10-1861) I imposed a \$1,000.00 fine because Licensee failed to obey process and provided no mitigation. In the instant matter, I recognize Licensee's Members are sincere but seem to lack the requisite knowledge required of a licensee. I am hopeful that this experience has chastened the two Members to acquire that knowledge.

Accordingly, I impose a \$250.00 fine.

ORDER:

**Imposition of Fine**

Licensee must pay a \$250.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

### **Retaining Jurisdiction**

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 5<sup>TH</sup> day of April, 2012.

A handwritten signature in cursive script, reading "Felix Thau", is written over a horizontal line.

Felix Thau, A.L.J.

bc

### **General Information**

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

### **Applying for Reconsideration**

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

### Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us). The full requirements for an appeal can be found in 47 P.S. §4-471.

### Detach Here and Return Stub with Payment

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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