

Mailing Date: SEP 06 2012

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

PENNSYLVANIA STATE	:	IN RE: Citation No.: 12-0325
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No.: W04-435557
	:	
v.	:	PLCB Lid No.: 62153
	:	
REDNECKS BAR & GRILL, LLC	:	PLCB License No.: R-AP-SS-14367
771 OLD ROUTE 71	:	
FALLOWFIELD TWP.	:	
CHARLEROI, PA 15022-3039	:	
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	:	

BEFORE: JUDGE FRISK

APPEARANCES:

BLCE COUNSEL: Michael C. Nickles, Esquire
LICENSEE COUNSEL: Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 2, 2012, 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 contains three (3) counts.

The first counts charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, [40 Pa. Code §5.32(a)] in that on September 16 and 17, and October 29 and

30, 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.

The second count charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)] in that on October 15, 29 and 30, 2011, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when its restaurant liquor license was suspended at Citation No. 10-2531.

The third count charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations, [40 Pa. Code §15.62(a)] in that on November 15 and December 14, 2011, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

An administrative hearing was conducted on Tuesday, July 31, 2012, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael C. Nickles, Esquire. The hearing was held ex parte.

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 August 22, 2011, and completed its investigation on January 18, 2012. (N.T. 6, Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation in a letter dated February 3, 2012, which was sent by certified mail and returned as "unclaimed" on March 4, 2012. (N.T. 6-7, Exhibit C-2)
3. The citation was issued on March 2, 2011, and was sent by certified mail and was returned as "unclaimed" on April 7, 2012. (N.T. 7-8, 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 June 11, 2012 by first class mail as well as certified mail.
5. The aforementioned certified mailing of the notice of hearing was returned as undeliverable.

COUNT ONE

6. The Enforcement Officer involved in this investigation estimates that the area surrounding Licensee's premises is approximately 50 percent residential and 50 percent rural. (N.T. 21)
7. On Friday, September 16, 2011 at 10:40 p.m., an Enforcement Officer parked his vehicle outside of Licensee's premises and heard the sound of amplified music emanating from within the premises at a distance of approximately 75 feet. The Enforcement Officer noted that five houses were within the area surveyed. The Enforcement Officer then conducted an outside surveillance where the sound of the amplified music emanating from within Licensee's premises was heard at a distance of approximately 360 feet in an easterly direction and 380 feet in a westerly direction along Old Route 71. (N.T. 9-10)
8. The Enforcement Officer entered Licensee's premises at 11:45 p.m., in an undercover capacity and observed a female tending bar. The Enforcement Officer further observed that pre-recorded music was being broadcast through an amplified sound system set up on the premises. The Enforcement Officer noted that the rear "porch door" was propped open. (N.T. 11-12)
9. The Enforcement Officer departed Licensee's premises at 12:15 a.m., then being September 17, 2011 and again conducted an outside surveillance. At this time, the Enforcement Officer heard the sound of amplified music emanating from within Licensee's premises at distances of approximately 370 feet in an easterly direction and 375 feet in a westerly direction along Old Route 71. The Enforcement Officer noted that approximately five homes were within the area surveyed (N.T. 12)

COUNTS ONE AND TWO

10. As the result of Licensee's failure to pay a fine in the amount of \$2,500.00 imposed in the Adjudication and Order issued by this Court at Citation No. 10-2531 dated June 17, 2011, a supplemental order was then issued dated September 09, 2011, imposing a suspension of Licensee's restaurant liquor license for a period of one day commencing at 7:00 a.m., on Tuesday, October 11, 2011 and continuing thereafter until payment of the fine was received. As a result of Licensee's continued failure to pay the fine imposed, a second supplemental order dated November 18, 2011 was issued by this Court continuing the suspension until January 2, 2012 at which time Licensee's restaurant liquor license was revoked. (N.T. 9, 12-14, 19-20, 25)
11. On Saturday, October 15, 2011 at 1:20 a.m., an Enforcement Officer entered Licensee's premises in an undercover capacity and observed a female bartender rendering service to eight (8) patrons. Upon entering, the Enforcement Officer purchased a 12-ounce bottle of Miller Lite Beer from the bartender. The Enforcement Officer departed at 2:30 a.m. with three other patrons preparing to leave. (N.T. 14)

12. On Saturday, October 29, 2011 at 11:55 p.m., an Enforcement Officer parked his vehicle in the parking lot servicing Licensee's premises and heard the sound of amplified music emanating from within the premises at a distance of approximately 100 feet. The Enforcement Officer commenced an outside surveillance and heard the sound of this amplified music at distances of up to 260 feet in an easterly direction and 300 feet in a westerly direction along Old Route 71. (N.T. 15-16)
13. At 12:05 a.m., then being Sunday, October 30, 2011, the Enforcement Officer entered Licensee's premises in an undercover capacity and observed a female bartender, heard to be called "Tracy" rendering service to four (4) patrons. The Enforcement Officer took a seat at the bar and purchased a 12-ounce bottle of Miller Lite beer from the bartender. During the course of this visit, the Enforcement Officer, along with the other patrons, were served "jello shots" containing vodka free of charge. The Enforcement Officer further noted that a disc jockey was providing pre-recorded entertainment through an amplified sound system set up on the premises. (N.T. 16)
14. The Enforcement Officer departed Licensee's premises at 12:30 a.m., and heard the sound of this amplified music emanating from within Licensee's premises at a distance of approximately 100 feet along Old Route 71 where the officer's vehicle was parked. (N.T. 17)

COUNT THREE

15. On Tuesday, November 15, 2011 at 3:25 p.m., an Enforcement Officer approached Licensee's premises and found it to be closed and that the interior was void of employees and patrons. The Enforcement Officer further surveyed the exterior of Licensee's premises and noted that there was no suspension placard posted anywhere visible from outside the premises. (N.T. 24)
16. On Wednesday, December 14, 2011 at 3:30 p.m., an Enforcement Officer approached Licensee's premises and found it to be closed and that the interior was void of employees and patrons. The Enforcement Officer further surveyed the exterior of Licensee's premises and noted that there was no suspension placard posted anywhere visible from outside the premises. (N.T. 17-18)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this Court concludes that the Bureau has established the violations as charged in Counts One, Two and Three of this Citation 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).

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 September 16 and 17, and October 29 and 30, 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)].

3. On October 15, 29 and 30, 2011, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages during a time when its restaurant liquor license was suspended at Citation No. 10-2531, in violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code, [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)].

4. On November 15 and December 14, 2011, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension, in violation of Section 15.62(a) of the Liquor Control Board Regulations, [40 Pa. Code §15.62(a)].

PRIOR RECORD:

Licensee has been licensed since October 9, 2009, and has had four (4) prior violations.

IN RE:

Citation No. 10-1404C. Fine \$1,250.00 and R.A.M.P training mandated. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Sales to a minor.
June 15, 2010.

Citation No. 10-2531. Fine \$2,500.00. Fine not paid and license suspended 1 day and thereafter until fine paid. Fine still not paid and license revoked. Licensee's appeal to Board pending.

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.

Citation No. 11-0459. Fine \$600.00. Fine not paid and licensed revoked.

1. Used loudspeakers or devices whereby the sound of music could be heard outside.
February 18, 2011.

Citation No. 11-0780. Fine \$2,000.00 and 4 days suspension. Fine not paid and licensed revoked.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.
March 14, 15, 16 and 22, 2011.
2. Sales during a time when the license was suspended.
March 14, 16 and 22, 2011.

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 these types found in this case.

The record discloses that Licensee's restaurant liquor license was revoked as the result of its failure to pay fines imposed at Citation Numbers 10-2531 and 11-0459. The evidence received at the Administrative hearing held in the present matter demonstrates Licensee's failure to comply with the liquor laws and orders issued by this Court.

ORDER:

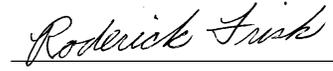
THEREFORE, IT IS HEREBY ORDERED that the Liquor License No. R-AP-SS-14367, issued to Rednecks Bar & Grill, LLC, be **REVOKED** effective at 7:00 a.m. on Monday, October 15, 2012. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is hereby CANCELLED.

Licensee is directed to remove its license from the wall on Monday, October 15, 2012 and return the license and Wholesale Liquor Purchase Permit Card and/or discount card to the Liquor Control Board, Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg PA 17110 personally or by mail so as to be received no later than Tuesday, October 9, 2012.

Jurisdiction is retained to ensure compliance with this order.

Rednecks Bar & Grill, LLC
IN RE: Citation No. 12-0325

Dated this 30TH day of AUGUST, 2012.



Roderick Frisk, J.

clm

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.