

Mailing Date: MAY 14 2013

[Appeals](#)

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

PENNSYLVANIA STATE	:	In re Citation No. 12-1610
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-450411
	:	
v.	:	PLCB LID No. 16212
	:	
FINACARO-MAGLIO, INC. T/A NOAH'S ARK	:	PLCB License No. R-AP-SS-13575
1548-50 MCKEAN STREET	:	
PHILADELPHIA, PA 19145 :	:	

JUDGE SHENKLE  
BLCE COUNSEL: Andrew R. Britt, Esq.  
LICENSEE: no appearance

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 20, 2012. There are three counts in the citation.

The first count alleges that Licensee violated §493(34) of the Liquor Code, 47 P.S. §4493(34), on August 24, 2012, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond Licensee's property line.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §10-602(5)(a.1) of the Clean Indoor Air Worker Protection Law, on September 21, 2012, by failing to post signage as required.

The third count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, and §10-602(3)(a.1)(iv) of the Clean Indoor Air Worker Protection Law, on September 21, 2012, by smoking or permitting smoking in a public place where it is prohibited.

At the hearing scheduled for March 28, 2013, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

**FINDINGS OF FACT:**

1. The Bureau investigated Licensee during the period August 27 through October 5, 2012, and sent it written notice of the results of its investigation on October 26, 2012 (N.T. 8-9, Ex. B-1).
2. A copy of this citation was mailed to Licensee on November 20, 2012, and again on January 29, 2013 (N.T. 9-10, Exhibit B-2).
3. A Notice of Hearing was mailed to Licensee on February 1, 2013.
4. On August 24, 2012, a liquor enforcement officer visited the licensed premises at about 10:30 p.m. He heard music coming from the premises at a distance of 200 feet, and found on entering the premises that the source of the music was loudspeakers being used by a 3-piece band. When the officer left the premises at about 10:50 p.m. he heard the music outside again, at a distance of 100 feet (N.T. 5-6).
5. On September 21, 2012, the officer entered the premises at 9:30 p.m. A bartender was serving five patrons. The bartender and one of the patrons were smoking cigarettes, using an ashtray on the bar. The officer did not see any "no smoking" signs in the premises (N.T. 6-7).
6. Licensee did not possess a waiver of the Clean Indoor Air Worker Protection Law on September 21, 2012 (Exhibit B-3).

CONCLUSIONS OF LAW:

Licensee violated 47 P.S. §4-493(34), on August 24, 2012, by permitting the use on the inside of the licensed premises of a loudspeaker, whereby music could be heard beyond Licensee's property line.

Licensee violated §10-602(5)(a.1) of the Clean Indoor Air Worker Protection Law, on September 21, 2012, by failing to post "no smoking" signs.

Licensee violated §10-602(3)(a.1)(iv) of the Clean Indoor Air Worker Protection Law, on September 21, 2012, by permitting smoking in a public place where it is prohibited.

PRIOR RECORD:

Licensee has been licensed since November 20, 1975, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

In re Citation No. 04-0848. \$500.00 fine.

1. Gambling (machine). April 7, 2004.
2. Operated without a valid health permit. February 25, March 20 and April 7, 2004.

In re Citation No. 05-2135. \$900.00 fine.

1. Sold liquor for consumption off premises. July 8 and August 13, 2005.

2. Loudspeakers could be heard outside. July 8 and August 5, 2005.
3. Not a *bona fide* restaurant (insufficient food). August 24, 2005.

In re Citation No. 06-0345. \$300.00 fine.

1. Sold liquor for consumption off premises. October 8, 2005.

In re Citation No. 07-0751. \$1,500.00 fine and R.A.M.P. – certification mandated. License suspended one day for late payment.

1. Sales to a minor. December 23, 2006.

In re Citation No. 07-1649. \$800.00 fine and verification of compliance. License suspended one day for late payment and late submission of verification.

1. Operated without a valid health permit. May 31 and June 15, 2007.
2. Not a *bona fide* restaurant (insufficient food, eating utensils and dishes). June 15, 2007.

In re Citation No. 08-0317. \$1,250.00 fine and R.A.M.P. – certification training mandated.

1. Sales to a minor. December 15, 2007.

In re Citation No. 08-2376. \$500.00 fine.

1. Operated without a valid health permit or license. August 6, 2008.

In re Citation No. 09-0262. \$350.00 fine.

1. Failed to comply with order mandating R.A.M.P. – certification. December 15, 2007.

In re Citation Nos. 09-0778 & 09-0839 (as consolidated under 09-0778). \$400.00 fine.

1. Failed to post a notice of suspension. March 9 and 10, 2009.

In re Citation No. 10-1662. \$500.00 fine.

1. Loudspeakers heard outside. January 10, 24, 31, March 8, May 21, 22 and 31, 2010.
2. Smoking where prohibited. March 6 and May 22, 2012.
3. Failed to post signage, as required. March 6 and May 22, 2012.

#### PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type. Penalties are assessed as follows:

Count No. 1 – a fine of \$400.00.

Count No. 2 – a fine of \$200.00.

Count No. 3 – a fine of \$200.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Finacaro-Maglio, Inc., t/a Noah's Ark, License No. R-AP-SS-13575, shall pay a fine of eight hundred dollars (\$800) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 6<sup>TH</sup> day of MAY, 2013.



David L. Shenle, J.

jb

**NOTICE: 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.**

**WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.**

**THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.**

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. 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

In re Citation No. 12-1610 Finacaro-Maglio,  
Inc.