

Mailing Date: JUL 23 2014

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-2478
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-467960
v.	:	
	:	
JO-LAT, INC.	:	PLCB LID No.: 46074
T/A PUZZLES PUB	:	
528 SANDERSON ST.	:	
THROOP, PA 18512-1244	:	PLCB License No.: R-AP-SS-6972

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Ex Parte

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on December 20, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Jo-Lat, Inc. (Licensee).

The first count charges Licensee with violations of Section 493(34) of the Liquor Code [47 P.S. §4-493(34)]. The charge is that Licensee, by your servants, agents, or employees, used, or permitted to be used on the inside of your licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond the licensee's property line, on October 23, 27 and November 2, 2013.

The second count charges Licensee with a violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)]. The charge is that Licensee, by your servants, agents, or employees, issued checks or drafts in payment for purchases of malt or brewed beverages, when you had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks, dated September 24, 2013.

I presided at an evidentiary hearing on June 5, 2014 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

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

FINDINGS OF FACT:

1. The Office of Administrative Law Judge sent a notice of hearing to Licensee at the address of record on May 1, 2014, by certified mail, return receipt requested and first class mail. The certified mail notice was returned unclaimed. The first class notice was not returned. (N.T. 4)

2. The Bureau began its investigation on September 24, 2013 and completed it on November 6, 2013. (N.T. 6)

3. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on November 13, 2013. The notice was subsequently sent out by first class mail on December 16, 2013. The notice alleged the violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

Count No. 1

4. On the three dates charged, Licensee permitted amplified music to be heard beyond the premises property line. (N.T. 14-27)

Count No. 2

5. Licensee issued two checks for purchasing beer from an importing distributor. The checks were dishonored due to insufficient funds. (Commonwealth Exhibit No. C-1, C-3 through C-5, N.T. 11-14)

CONCLUSION(S) OF LAW:

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

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since July 10, 2000, and has the following Adjudication history:

In Re Citation No.: 03-1518. Fine \$50.00.

Failed to display on the licensed premises documentary evidence that the premises meets all sanitary requirements for a public eating place on August 12, 2003.

In Re Citation No.: 05-0416. Fine \$350.00.

Possessed or operated gambling devices or permitted gambling on the licensed premises (tickets) on February 5, 2005.

In Re Citation No.: 10-1240. Fine \$75.00.

Sold alcoholic beverages on credit in contravention of the Liquor Code and Title 40 of the Pennsylvania Code on May 2, 22 and 25, 2010.

In Re Citation No.: 10-2315. Fine \$1,400.00.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m. on September 5, 2010.
2. Sales between 2:00 a.m. and 7:00 a.m. on September 25, 2010.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time on September 5 and 25, 2010.
4. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. on September 5 and 25, 2010.

In Re Citation No.: 13-0969. Fine \$250.00.

Used loudspeakers or devices whereby the sound of music could be heard beyond the licensee's property line on March 23, 2013.

In Re Citation No.: 13-1430. Fine \$300.00.

Used loudspeakers or devices whereby the sound of music could be heard beyond the licensee's property line on June 7, 8, 21 and 22, 2013.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [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)

As Licensee has failed to appear without communicating a reason, I impose:

Count No. 1 - \$1,000.00 fine.

Count No. 2 - \$1,000.00 fine and a fifteen days Amusement Permit suspension.

ORDER:

Imposition of Fine

Licensee must pay a \$2,000.00 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.

Imposition of Amusement Permit Suspension

I suspend the Amusement Permit for fifteen days, beginning Friday, September 5, 2014, 7:00 a.m., and ending Saturday, September 20, 2014, 7:00 a.m. Licensee must place the enclosed label over the Amusement Permit portion of the license prior to the suspension's effective date and time. Licensee must keep the label on the license as above described, for the entire fifteen days suspension. Licensee may remove the label after the suspension ends.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 15th day of July, 2014.

A handwritten signature in cursive script that reads "Felix Thau". The signature is written in black ink and is positioned above 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. If you have not already done so, it may be prudent for you 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. The full requirements for an appeal can be found in 47 P.S. §4-471.

Detach Here and Return Stub with Payment – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or a check drawn on the business or trust account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation to:

PLCB – Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Credit/debit cards may be used: visit www.lcb.state.pa.us scroll over LEGAL and then click on Office of ALJ for instructions..