

Mailing Date: MAR 08 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 14-1558
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W06-477858
	:	
	:	
v.	:	
	:	
	:	PLCB LID - 69009
FUMALLS, LLC	:	
T/A SOUTH AVIS INN	:	PLCB LICENSE NO. R-AP-SS-EHF-17090
67 MARYLAND AVE.	:	
JERSEY SHORE, PA 17740-6993	:	
	:	
CLINTON COUNTY	:	

**ADJUDICATION**

**BEFORE: DANIEL T. FLAHERTY, JR., ALJ**  
**BUREAU COUNSEL: JOHN H. PIETRZAK**  
**LICENSEE: NO APPEARANCE**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on August 7, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against FUMALLS, LLC, (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(34) of the Liquor Code [47 P.S. §4-493(34)] in that on June 14 and 15, 2014, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside or outside of the 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.

The investigation which gave rise to the citation began on April 21, 2014 and was completed on June 30, 2014; and notice of the violation was sent to Licensee by Certified Mail on July 16, 2014. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 13, 2016 at the Lysock Complex, 542 County Farm Road, Suite 2, Montoursville, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 67 Maryland Avenue, Jersey Shore, PA 17740-6993 by certified mail on December 2, 2015. The notice set forth the date and time of the hearing as January 13, 2016 at 9:30 a.m., and the place of hearing as The Lysock Complex, 542 County Farm Road, Suite 2, Montoursville, PA 17754-9865.

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 June 14, 2014, an officer of the Bureau made an undercover visit to the licensed premises, arriving at 9:26 p.m. (N.T. 7-8).
2. The officer paid a cover charge and entered by the side entrance. Upon entry, the officer observed a four-piece band playing electronically amplified instruments (N.T. 8).
3. Upon making his observations, the officer departed the licensed premises and crossed Maryland Avenue to the Jersey Shore Steel Plant. From that location, the officer could hear amplified music emanating from the licensed premises (N.T. 8).
4. The officer then went to a second location, 93 Maryland Avenue, which is approximately 189 feet from the licensed premises, and could still hear the amplified music (N.T. 9).
5. The officer then went to a third location, 1020 Charles Street, approximately 165 feet from the licensed premises, and again could hear amplified music emanating from the licensed premises (N.T. 9).
6. On June 15, 2014, two officers of the Bureau arrived at the licensed premises at 3:35 p.m. (N.T. 10).
7. The officers heard music being played outside the licensed premises and proceeded outside to a pavilion where they observed a singer, called Buddy Hayes, playing music through an electric amplified guitar and through an additional amplified speaker (N.T. 10-11).
8. The officer went to the locations to which he had gone on the previous day and could hear amplified music at each of these locations (N.T. 11).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since December 4, 2013, and has had no prior violations.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee FUMALLS, LLC, pay a fine of \$250.00 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 4<sup>TH</sup> day of March, 2016.



Daniel T. Flaherty, Jr., J.

an

**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 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 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

IN RE: CITATION NO. 14-1558  
FUMALLS, LLC