

Mailing Date: MAY 21 2001

Appeal
PUBLICATION

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 00-1116
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W8-214261
v.	:	
	:	
LID - 18583 FREIGHT HOUSE INC	:	
1905 MORAVIA STREET EXTENSION	:	
NEW CASTLE PA 16101-5609	:	
	:	
LAWRENCE COUNTY	:	
LICENSE NO. R-AP-17325	:	

BEFORE: JUDGE ROBERT F SKWARYK

APPEARANCES:

For Bureau of Enforcement
Stanley J. Wolowski, Esquire

For Licensee
William M. Panella, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 12, 2000, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Freight House, Inc., License Number R-AP-17325 (hereinafter Licensee).

The citation contains two counts¹.

On July 18, 2000, the Bureau's Motion to Amend the citation by adding the violation date of May 6, 2000 to Count one and the violation dates of May 5 and June 11, 2000 to Count two was granted.

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Count one of the citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5503 of the Crimes Code [18 Pa. C.S. §5503], in that on May 5 and June 11, 2000, the licensed establishment was operated in a noisy and/or disorderly manner.

Count two of the citation charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)], in that on May 6, 2000, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The investigation which gave rise to the citation began on February 19, 2000 and was completed on June 21, 2000; and notice of the violation was sent to Licensee by Certified Mail on June 26, 2000. The notice of violation was received by Licensee on June 27, 2000.

A consolidated evidentiary hearing with Citation Number 00-1189 was held on this matter on February 21, 2001 in Erie, Pennsylvania.

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. Licensee is located in Shenango Township, Lawrence County, Pennsylvania and holds Restaurant Liquor License Number R-AP-17325. (N.T. 4, 53, 139)
2. Licensee's corporate president, Richard Senchak, owns an adjacent unlicensed property in South New Castle Borough for additional parking. (N.T. 71, 139, 147, 157)
3. Licensee has a jukebox and employed a disc jockey equipped with an amplified loudspeaker system to play oldies on Thursday nights and "rap" bass-heavy music on weekends. (N.T. 139-142, 152, 157-158)
4. Licensee has a kitchen and employs a cook for food service up to midnight. (N.T. 167-169, 174, 176-178)
5. Licensee employs Eric "Boojack" Stanton as a doorman/bouncer for security. (N.T. 155, 169-170)
6. The area surrounding the licensed premises is mixed residential and commercial in nature. (N.T. 18-19, 26,59, 87-88, 142)

7. Mr. Senchak and his employees monitor the music in the parking lots and at the homes of two neighbors who Mr. Senchak believes are complainants in this case. (N.T. 141-144, 146, 149, 169, 175-176)

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8. During the period February 19, 2000 through June 21, 2000, Enforcement Officer Jorinscay was involved in a continuing investigation in response to complaints from Shenango Township Police. (By Stipulation - N.T. 11)
9. On Friday, May 5, 2000 at 1:06 a.m., Officer Garver of the Shenango Township Police Department stopped his patrol car approximately 150 feet from the licensed premises and heard loud music emanating from it. (N.T. 31-36, 38-39)
10. Officer Garver rolled down his car's window to listen for music due to prior complaints made against the licensed premises. (N.T. 37, 40)
11. Officer Garver observed Licensee's sign which advertised Oldies Night on Thursday and DJs on Friday and Saturday. (N.T. 36)
12. Officer Garver believed the music was amplified because of its nature and loudness. (N.T. 38, 39, 42)
13. On Saturday, May 6, 2000 at 12:30 a.m., Enforcement Officer Scheuermann arrived at the licensed premises and paced off distances up to 150 feet west of the premises, 100 feet to the south, 200 feet to the east and 300 feet to the north at which he could hear the sound of music and bass beat emanating from the licensed premises. (N.T. 16-17, 23-24)
14. At approximately 12:45 a.m., Enforcement Officer Scheuermann entered the premises through an open front door and found the source of the music was a disc jockey equipped with amplified loudspeakers. (N.T. 17-18, 27)
15. During the visit, the officer observed Licensee's corporate officer, Richard Senchak, present. (N.T. 18)
16. At approximately 12:55 a.m., Officer Scheuermann departed the premises. (N.T. 18-19)
17. On June 11, 2000 at approximately 1:36 a.m., Officer Dudash of the Shenango Township Police Department went to the licensed premises for a noise complaint and found Licensee's owner, Mr. Senchak, outside in the parking lot. (N.T. 45-49)

18. Officer Dudash heard loud bass music from a disc jockey and asked him to turn the music down. (N.T. 48-49, 56-57)
19. At approximately 2:20 a.m., Officer Dudash was dispatched to the licensed premises for another noise complaint. (N.T. 46-49, 62)
20. While enroute and talking by the telephone with the complainant, Licensee's residential neighbor, Ms. Snyder, Officer Dudash overheard Mr. Senchak screaming profanities at Ms. Snyder and that she was harassing him. (N.T. 49-52, 143-146, 158-160)

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21. At approximately 2:20 a.m., Officer Dudash arrived at the licensed premises and found Police Officer Squicquero trying to calm Mr. Senchak down and remove him from Ms. Snyder's house. (N.T. 52, 62-63), 143-146, 158-160)
22. Officer Squicquero observed Mr. Senchak and several other individuals in the parking lot arguing with several neighbors across the street in their yards. (N.T. 63, 75, 143-146, 158-160)
23. Officer Squicquero observed Mr. Senchak give his neighbors "the finger," being an obscene gesture. (N.T. 75-77, 143-146, 158-160)
24. Officer Squicquero questioned Mr. Senchak about the disturbance and asked him for his identification; however, Mr. Senchak became argumentative questioning the officer's jurisdiction. (6465, 70-71, 143-146).
25. Officer Squicquero observed one of the individuals with Mr. Senchak who was loud and argumentative and appeared invisibly intoxicated. (N.T. 65-66, 69, 143-146)
26. Mr. Senchak did not tell the individual to quiet down. (N.T. 68-69)

CONCLUSIONS OF LAW:

Counts one and two – Sustained as charged.

DISCUSSION:

Counsels for the Bureau and Licensee submitted briefs in this case.

At the hearing held on the matter, Enforcement Officers Jorinscay and Scheuermann testified in detail as to their continuing investigations in this matter. Officer Scheuermann visited the premises during the early morning hours of May 6, 2000 and heard loud amplified music emanating outside. The Bureau also presented three Shenango Township police officers who testified about noise disturbances and loud music at the premises during the early morning of May 5 and June 11, 2000.

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d 521 (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d 857 (Pa. Cmwlth. 1982).

As to Count one, Section 5503(a) of the Crimes Code provides as follows:

Disorderly Conduct

(a) Offense defined. – A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

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- (1) engages in fighting or threatening, or in violent or tumultuous behavior;
- (2) makes unreasonable noise;
- (3) uses obscene language, or makes an obscene gesture; or
- (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

On February 14, 2001, citing PLCB v. TLK, Inc., 518 Pa. 500, 544 A.2d 931 (1988), the Board affirmed an OALJ Adjudication in which the Bureau showed a pattern of disturbances in and around a licensed premises and Licensee knew or reasonably should have known of the activity and failed to take any steps to prevent it. PLCB v. J.C.J.M., Inc., Case Number 99-1647.

In Commonwealth v. Alpha Epsilon PI, 540 A.2d 580 (Pa. Super. 1988), the Superior Court upheld a conviction for disorderly conduct based on loud music heard by a police officer emanating from a fraternity house during late night hours at 50 yards away.

I find the testimony of the enforcement officers and police officers to be credible, and that the Bureau met its burden of proof under Count one, as amended. As such, Count one, as amended, is sustained.

As to Count two, Section 5.32 of the Liquor Control Board Regulations provides, in part, as follows:

RESTRICTIONS. -

(a) A licensee may not use or permit to be used inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard on the outside of the licensed premises.

This Regulation has been held to be reasonable and consistent with the legislative intent of the Liquor Code. In Re: Two-O-Two-Tavern, Inc., t/a Friendly Saloon, 492 A.2d 502, 504 (Pa. Cmwlth. 1985)

Licensee's music was broadcast via an amplified loudspeaker system.

I find the testimony of the enforcement officers and police officers to be credible, and that the Bureau met its burden of proof under Count two, as amended. As such, Count two, as amended, is sustained.

PRIOR RECORD:

Licensee has been licensed since January 15, 1987, and has had two prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

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Citation No. 98-2341. Fine \$600.00.

1. Sales to a visibly intoxicated person. September 24, 1998.

Citation No. 99-0576. Fine \$500.00 and revocation of Amusement Permit. Licensee's appeal to Board dismissed. Licensee's appeal to Common Pleas Court dismissed. Licensee's appeal to Commonwealth Court withdrawn.

1. Used loudspeakers or devices whereby music could be heard outside.
March 11, 12, 19 and 20, 1999.

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 types found in this case.

After due consideration of the circumstances giving rise to the citation, the following penalty will be imposed:

Count one - \$400.00 fine and revocation of Amusement Permit; and

Count two - \$400.00 and revocation of Amusement Permit.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Freight House, Inc., pay a fine of \$800.00 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.

IT IS HEREBY ORDERED that the Amusement Permit of Freight House, Inc., Licensee Number R-AP-17325, be revoked effective at 7:00 a.m. on Monday, August 6, 2001. Licensee is directed to place the enclosed suspension label over the Amusement Permit portion of the license on or before the effective date of the suspension.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please 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

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Dated this 15th day of May, 2001

Robert F. Skwaryk, J.

cbm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.