

Mailing Date: September 11, 2001

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 00-1116
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
FREIGHT HOUSE, INC.	:	License No. R-17325
1905 Moravia Street Extension	:	
New Castle, PA 16101-5609	:	

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AMENDED OPINION

Freight House, Inc. ("Licensee") appeals from the Adjudication and Order of Administrative Law Judge Robert F. Skywark ("ALJ"), wherein the ALJ sustained both counts of the citation against Licensee and imposed a revocation of Licensee's Amusement Permit and fines totaling \$800.00.

The first count of the citation charged Licensee with violating section 5503 of the Crimes Code [18 Pa C.S. §5503], thereby violating Liquor Code section 471 [47 P.S. §4-471] in that on May 5, May 6,¹ and June 11, 2000, the licensed establishment was operated in a noisy and/or disorderly manner.

The second count of the citation charged Licensee with violating section 5.32(a) of the Board's regulations [40 Pa. Code §5.32(a)], in that on May 5, May 6, and June 11, 2000,² 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.

Pursuant to section 471 of the Liquor Code [47 P.S. §4-471], the appeal in this case must be based solely on the record before the ALJ. Where the decision of the ALJ is based upon substantial evidence, the Board must affirm the decision.

The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support

¹ By Order dated July 18, 2000, the Bureau's Motion to Amend this citation by adding the violation date of May 6, 2000 to Count One was granted by Chief Administrative Law Judge Eileen S. Maunus.

² By Order dated July 18, 2000, the Bureau's Motion to Amend this citation by adding the violation dates of May 5 and June 11, 2000 to Count Two was granted by Chief ALJ Maunus.

a conclusion requiring something more than a scintilla creating mere suspicion of the fact to be established. Johnson vs. Pennsylvania Board of Probation and Parole, 706 A.2d 903 (Pa. Cmwlth. 1998); Chapman vs. Pennsylvania Board of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, Licensee argues that Finding of Fact Nos. 12, 20, 23, and 24 are not supported by substantial evidence.

Finding of Fact No. 12 relates to both charges of the citation. On May 5, 2000, Officer Graver of the Shenango Township Police Department, while on routine patrol, heard loud music emanating from the subject licensed premises at a distance of approximately 150 feet. (N.T. 32-35). Officer Graver also noticed a lighted sign in front of the premises, which advertised “oldies night Thursdays”, “D.J. Friday and Saturday”. (N.T. 36). Officer Graver further testified that the area around the subject licensed premises is primarily residential. (N.T. 36).

On cross-examination, Officer Graver testified that the police department had received prior complaints regarding music emanating from the subject licensed premises. (N.T. 37-38). Officer Graver did not enter the licensed premises, but believes that the music was amplified due to the volume of the sounds he heard. (N.T. 38-39).

Licensee's sole corporate officer, Richard Senchak, testified that on the nights Licensee has a D.J. (Thursdays, Fridays, and Saturdays), the D.J. uses the amplification equipment on the premises for the D.J.'s use. (N.T. 141,158). Mr. Senchak further testified that he patrols the outside of the premises in order to determine if the music is too loud and to chase away persons who loiter in the parking lots playing loud music from their car radios. (N.T. 141,146). Mr. Senchak testified that one of his amplifiers was not working properly on May 5 and May 6, 2000, and that he believes Officer Graver heard patrons playing their radios in a parking lot that he owns down the street from the premises. (N.T. 146-147).

Pennsylvania State Police, Bureau of Liquor Control Enforcement Officer ("Bureau"), Robert Scheuermann testified that he visited the premises on May 6, 2000. (N.T. 15). On that date, he heard amplified music emanating from the premises to distances of: 150 feet to the west; 100 feet to the south; 300 feet to the north; and 200 feet to the east. (N.T. 16-17). Officer Scheuermann further testified that he entered the licensed premises through an open front door and that there was a D.J. providing music through an amplified system, with four speakers. (N.T. 17-18).

Officer Scheuermann also observed Licensee's sole corporate officer, Richard Senchak, on the licensed premises. (N.T. 18).

Officer Dudash of the Shenango Township Police Department testified that early on the morning of June 11, 2000, he was dispatched to the subject licensed premises on a complaint of loud music, which was clearly audible upon his arrival. (N.T. 45-47). He further testified that when he arrived, that Richard Senchak was outside of the front door of the subject premises and when requested to, Mr. Senchak had the volume of the music turned down. (N.T. 47-48).

Finding of Fact Nos. 20, 23, and 24 relate only to the noisy and/or disorderly operation count of the citation. Specifically, they relate to events that occurred outside of the licensed premises on the date of June 11, 2000. On that date, Officer Squicquero of the Shenango Township Police Department was dispatched to the vicinity of the licensed premises to answer a complaint regarding a disturbance between Richard Senchak and neighbors of the licensed premises. (N.T. 62). Upon arriving, Officer Squicquero found Mr. Senchak in the parking lot of the premises with several other individuals. (N.T. 63). Across the street from the parking lot, in a group, were several persons who reside in the immediate area of the licensed

premises. (N.T. 63). Officer Squicquero asked Mr. Senchak for identification which Mr. Senchak refused to produce. (N.T. 64-65). Officer Squicquero also testified that while he was in the parking lot of the subject licensed premises, he observed Mr. Senchak gesture offensively to his neighbors with his middle finger. (N.T. 75, 77).

Officer Dudash was also dispatched, for a second time, to the licensed premises on the morning of June 11, 2000. (N.T. 45-46, 49). When Officer Dudash was contacted by his dispatcher, he was instructed to contact the complainant by telephone (N.T. 49). While Officer Dudash was talking to the complainant on the phone, he could hear Mr. Senchak screaming profanities at the complainant(s). (N.T. 49-52). This continued for about 5 minutes. (N.T. 52).

Officer Squicquero testified that the confrontation involving Mr. Senchak and his group of friends, and Mr. Senchak's neighbors on June 11, 2000 lasted approximately 30 to 45 minutes. (N.T. 70-71). Officer Squicquero also testified that one of Mr. Senchak's friends continuously attempted to disrupt his interview of Mr. Senchak and that Mr. Senchak did nothing to discourage his friend from interrupting. (N.T. 68-69).

Furthermore, in Officer Squicquero's opinion, Mr. Senchak's friend was intoxicated. (N.T. 68-69).

Mr. Senchak testified that in his opinion, the music emanating from his premises was not very loud. (N.T. 141). Mr. Senchak also testified that on the morning of June 11, 2000, he was not screaming at his neighbors, but rather, he was having a discussion with his door person. (N.T.144-146). Mr. Senchak also testified that as a result of his conduct on the morning of June 11, 2000, he was arrested for disorderly conduct and that the charges were later dismissed at the District Justice level. (N.T. 146).

Licensee's first allegation on appeal is whether the music emanating from the premises on Friday, May 5, 2000, was amplified as required for a violation to occur under section 5.32(a) of the Board's regulations. [40 Pa. Code §5.32(a)]. Even though Shenango Township Police Officer Graver did not enter the premises to verify that the music was amplified, the volume of the music that he heard some 50 feet away from the premises, coupled with additional testimony is sufficient evidence for the ALJ to draw the conclusion that it was indeed amplified. The sole corporate officer of Licensee testified that Licensee maintained D.J. equipment, including amplifiers, for the use of the D.J. on Thursday, Friday, and Saturday nights. Additionally, when

Officer Scheuermann visited the premises on the following day, May 6, 2000, he did verify that the music he heard was being produced by means of amplification. The determination by the ALJ that the music on each occasion was amplified reasonably follows.

The remaining portion of the appeal, as noted above, deals with the conduct of the sole corporate officer of Licensee and his friends on the date of June 11, 2000. The finding by the ALJ relates to the conduct of the premises as a whole rather than the conduct of one person, such as Mr. Senchak. While we would agree that “the finger” is not obscene and that Mr. Senchak was not required to identify himself under these circumstances, there is more than enough evidence to find that Mr. Senchak was yelling profanities at his neighbors and more particularly at Ms. Snyder. The noisy and disorderly operation of the premises on the days in question is sufficient to sustain the counts of the citation and the penalties imposed are well within the range permitted by law.

Based on the foregoing, the decision of the ALJ is supported by substantial evidence and is therefore sustained.

AMENDED ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee must pay the fine in the amount of \$800.00 within 20 days of the mailing date of this Order. Failure to do so will result in license suspension or revocation.

It is further ordered that the Amusement Permit of Licensee, Freight House, Inc., be revoked effective at 7:00 a.m. on Monday, October 15, 2001. Licensee is directed to place the enclosed suspension label over the Amusement Permit portion of its license on or before the effective date of the revocation.

Licensee must adhere to all other conditions set forth in the ALJ's Order.

Board Secretary