

Mailing Date: January 16, 2002

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 00-1220  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

J.C.J.M., INC. : License No. R-3097  
t/a Amnesia :  
310 Market Street :  
Kingston, PA 18704-1224 :

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and  
John Pietrzak, Esquire  
PENNSYLVANIA STATE POLICE  
Bureau of Liquor Control Enforcement  
3655 Vartan Way  
Harrisburg, PA 17110

## OPINION

J.C.J.M., Inc., t/a Amnesia ("Licensee"), appeals from the Adjudication and Order of Administrative Law Judge Felix Thau ("ALJ"), wherein the ALJ sustained the eight-count citation against Licensee and imposed a penalty consisting of a fine of \$12,000.00 and a 61-day suspension of the license.

The first count of the citation charged that, on June 18, 2000, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, fifteen (15) years of age in violation of section 493(1) of the Liquor Code [47 P.S. §4-493(1)].

The second count charged that, on June 18, 30 and July 13, 2000, Licensee, by its servants, agents or employes, permitted 257 minors to frequent its licensed premises in violation of section 493(14) of the Liquor Code [47 P.S. §4-493(14)].

The third count charged that, on June 18, 2000, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m., in violation of sections

406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(3), 4-493(16)].

The fourth count charged that, on June 18, 2000, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages in violation of section 499(a) of the Liquor Code [47 P.S. §4-499(a)].

The fifth count charged that, on June 18, 2000, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m. in violation of section 499(a) of the Liquor Code [47 P.S. §4-499(a)].

The sixth count of the citation charged that, on January 28, February 18, 19, 27, March 5, 10, 17, 21, April 6, 7, 8, 9, 13, 15, 16, 20, 21, 27, 28 and May 5, 2000<sup>1</sup>, Licensee's establishment was operated in a noisy and/or disorderly manner in violation of section 471 of the Liquor Code [47 P.S. §4-471].

The seventh count charged that, on June 30, 2000, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside in violation of section 5.32(a) of the Board's Regulations [40 Pa. Code §5.32(a)].

The eighth count charged that, on June 18, 2000, Licensee, by its servants, agents or employes, permitted dancing to recorded music until 3:30 a.m. in violation of section 493(10) of the Liquor Code and section 5.31(d)(1) of the Board's Regulations [47 P.S. §4-493(10); 40 Pa. Code §5.31(d)(1)].

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 a conclusion requiring something more than a scintilla creating mere suspicion

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<sup>1</sup> At the hearing, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") withdrew its

of the fact to be established. Johnson v. Pennsylvania Board of Probation and Parole, 706 A.2d 903 (Pa. Cmwlth. 1998); Chapman v. Pennsylvania Board of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

In its appeal, Licensee argues that the ALJ erred in failing to grant Licensee's Petition for Disqualification of the ALJ, and that the ALJ's findings of fact are not supported by substantial evidence. Licensee also argues that it is entitled to reversal of the ALJ's adjudication as a matter of law. Licensee finally argues that the penalty imposed by the ALJ is excessive, unreasonable and unconscionable.

The Board has reviewed the record and the ALJ's Adjudication and Order with Licensee's allegations in mind.

Procedurally, it should be noted that on May 4, 2001, Licensee filed a Petition for Disqualification of Administrative Law Judge. On May 7, 2001, the ALJ issued an Opinion and Order denying Licensee's Petition.

On April 6, 2000, at approximately 11:12 p.m., while on "Amnesia detail" to monitor Licensee's business, Michael Krzywicki, a police officer for the Municipality of Kingston, observed a male urinating on the Gold's Gym

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charges relative to March 10, 17 and April 7, 2000. (N.T. 13-14).

building connected to Licensee's premises in Licensee's parking lot. (N.T. 110-112).

Amnesia detail consists of two police officers in plain clothes and an unmarked car patrolling Licensee's parking lot and the nearby vicinity from 10:00 or 11:00 p.m. to 3:00 a.m. (N.T. 116-117, 129, 134, 146, 169-170, 173). The detail was created as a result of complaints received from several businesses about illegal parking, urinating and garbage consisting of beer bottles. (N.T. 116). Amnesia detail has not been conducted for the last eight to twelve months. (N.T. 117).

On April 9, 2000, while on Amnesia patrol, Richard Kotchik, a police officer for the Kingston Municipal Police Department, observed an individual urinating in Licensee's parking lot near its building at 1:47 a.m. (N.T. 143, 159-160). He cited the individual for disorderly conduct. (N.T. 159). Then, at 2:11 a.m., Officer Kotchik observed a commotion and observed people pushing and shoving in Licensee's side parking lot as the business let out. (N.T. 159-160, 162-164). He observed seven to ten groups of six to ten people begin fighting in the parking lot. (N.T. 160-161, 164). Officer Kotchik was struck by an individual that he attempted to subdue. (N.T. 160). Officer Kotchik further observed an altercation to the side of

Licensee's establishment involving two individuals and Licensee's security, during which Licensee's security punched one of the individuals in the face, causing injury. (N.T. 161-162, 165-166). The individual was cited for harassment, disorderly conduct and public drunkenness, while Licensee's security guard was cited for simple assault and harassment. (N.T. 162, 166). Officer Kotchik's investigation revealed that a fight had broken out inside Licensee's premises, and that the individual who struck him had been pepper-sprayed inside the establishment. (N.T. 162-163).

On April 15, 2000, Mindy Pretzman, a police officer employed by the Municipality of Kingston, while on plain-clothes Amnesia detail to monitor the area of Licensee's premises, at approximately 11:55 p.m., observed a male exit a vehicle, urinate on a shed located in Licensee's parking lot approximately 30 feet from Licensee's building, then return to the vehicle. (N.T. 65, 67, 69-70, 83-86). No employees of Licensee were present in the area at the time. (N.T. 69). The individual was cited for disorderly conduct. (N.T. 68).

On April 16, 2000, Officer Kotchik was in Licensee's parking lot on Amnesia detail when he observed a male throw a bottle of beer in the parking lot. (N.T. 167-169). The man was cited for an open container and littering,

and another person with him was cited for underage drinking. (N.T. 168-169). According to Officer Kotchik, Licensee's premises closes to teen dances at 2:00 a.m. (N.T. 170). Kingston does not have a curfew. (N.T. 171). The fewest number of incidents Officer Kotchik has observed while on Amnesia detail is two in one night. (N.T. 174).

On April 21, 2000, at 12:45 a.m., while on Amnesia detail, Officer Krzywicki observed two females consuming alcohol inside a vehicle in the front portion of Licensee's parking lot, approximately 40 feet from the building. (N.T. 125-127). He cited one of the females for underage drinking, and the other for an open container. (N.T. 127). On that same date, Officer Krzywicki cited for underage drinking two males he observed consuming alcohol inside a vehicle in Licensee's parking lot at 1:06 a.m. (N.T. 127-128). At 1:23 a.m., Officer Krzywicki observed three females in a vehicle in Licensee's parking lot who he cited for underage drinking. (N.T. 128). On that same date, he observed a male in possession of an open container urinating in Licensee's parking lot, and he cited him for the open container and disorderly conduct. (N.T. 128-129). In all cases of the minors in possession of alcohol on April 21, 2000, the minors declined to

say where they obtained the alcohol, and the officer did not know how long the minors had been in the parking lot. (N.T. 130-132).

Morgan Karge's date of birth is November 20, 1984; she was fifteen years old on June 18, 2000. (N.T. 179-180). She and Lauren Ranck, who was over the age of 21, arrived at Licensee's premises at approximately 10:00 p.m. on June 17, 2000. (N.T. 180-181, 183, 206, 208-209, 230-231, 235). They did not have anything to drink before arriving there, nor did they drink in Licensee's parking lot upon their arrival. (N.T. 205-206, 209-210, 235). Ms. Karge went to the under 21 section of Licensee's premises and remained there until approximately 2:15 a.m. on June 18, 2000. (N.T. 183-184, 216). Before 2:00 a.m., on approximately three to five occasions that evening, Ms. Ranck provided shots of Red Death or Bay Breezers to Ms. Karge by spitting mouthfuls she obtained in the bar area into Ms. Karge's mouth, or a cup, while Ms. Karge was in the under 21 area of Licensee's premises. (N.T. 210-213, 229, 235, 237-238). Also while inside Licensee's premises, several bouncers invited Ms. Karge, and an individual who claimed that he would soon run the club invited Ms. Ranck, to an after-hours party. (N.T. 218-219, 231, 233).

Ms. Karge and Ms. Ranck exited Licensee's premises at approximately 2:15 a.m. on June 18, 2000. (N.T. 216). Ms. Karge had alcohol in her system. (N.T. 216-217). As they exited the premises, a bouncer invited them to stay, so they re-entered the building. (N.T. 184, 186, 193, 217-219, 232-233, 238). They went to the bar area, where Ms. Karge ordered, and the bartender served her, a Kamikaze shot and a Mad Melon and Sprite, which she drank. (N.T. 186-187, 189-190, 221). The bartender did not ask relative to her age, nor did he take money for the drinks. (N.T. 186-187, 189-190). When asked by someone on the premises after 2:00 a.m., Ms. Karge told her age; however, the person did not seem to have a problem with it, and she was not asked to leave the bar area. (N.T. 186-187). There were 35 to 40 people on the premises at the time, including approximately 15 bouncers, all of whom were drinking. (N.T. 187-188). Ms. Karge also consumed a Kamikaze shot and two shots of Baja Rose, ordered for her by someone who claimed that he would soon run the club. (N.T. 188-191, 222). The bartender served the shots to her, without inquiring relative to her age, and she did not pay for them. (N.T. 189-191, 222). At some point after 2:15 a.m., while inside the premises, a bouncer gave Ms. Karge a drink consisting of cranberry juice and vodka, which she

drank. (N.T. 185-186, 219-221). In addition to consuming alcohol on Licensee's premises after 2:15 a.m., Ms. Karge and Ms. Ranck danced on the dance floor in the under 21 section to music played by a disc jockey. (N.T. 194-195, 238).

Ms. Ranck was sure that she drank alcohol on Licensee's premises after 2:30 a.m., however, she did not have much of a memory of the evening otherwise. (N.T. 233). She recalled going back and forth between the bar and the under 21 areas of Licensee's premises. (N.T. 241). Ms. Ranck explained that Licensee's premises is set up so that, upon entering the establishment, there is a hallway and the under 21 section is to the right and the bar area is to the left of the hallway. (N.T. 241). She recalled Ms. Karge being on the dance floor of the under 21 section of the establishment with a cup after 2:30 a.m., but she could not state whether there was alcohol in it, or how she got it. (N.T. 233-234, 238-239). She does not recall leaving the premises. (N.T. 233-234). Ms. Ranck refused to provide a statement to a Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") officer from the Williamsport office or to an investigator. (N.T. 240-241).

Ms. Karge and Ms. Ranck left Licensee's premises at approximately 3:30 a.m., after Ms. Ranck passed out because she was drunk. (N.T. 195). Ms. Karge drove Ms. Ranck, in her father's truck approximately two miles to a nearby Turkey Hill, where she parked, because she was too drunk to drive. (N.T. 73-74, 195-196, 219). A gentleman at Turkey Hill called the police, she was picked up by the Wilkes-Barre Police Department and Ms. Ranck was taken to the hospital. (N.T. 196-197, 199, 229).

On June 18, 2000, Officer Pretzman was dispatched to the Wilkes-Barre City police station at approximately 4:00 a.m. on June 18, 2000 on a report of two females who had been drinking at Licensee's premises. (N.T. 63, 71-72). She observed signs that Ms. Karge had consumed alcoholic beverages. (N.T. 64). She obtained a statement from Ms. Karge, incorporated the information provided in a police incident report and notified the juvenile officer and the Bureau about the incident. (N.T. 65, 73, 79, 86-90).

Officer Pretzman told Ms. Karge, following this incident, that her interests were in Licensee's establishment and its employees, not in charging her, and that her full cooperation was expected. (N.T. 75-77; Ex. 1-2). Ms. Karge provided statements to Officer Pretzman, and was later only cited

by Wilkes-Barre Police for underage drinking. (N.T. 200-201, 204-208). Ms. Karge was drunk when she provided the statements to Officer Pretzman. (N.T. 219, 222).

Ms. Karge had been at Licensee's establishment more than once between February and June 2000, but always in the under 21 area. (N.T. 201-202, 224). Ms. Karge and Ms. Ranck were well known at Licensee's premises. (N.T. 219). Ms. Karge went with Ms. Ranck on those occasions, but did not consume alcohol. (N.T. 210-211).

Bureau Officer, Robert J. Yonick, began an investigation of Licensee's operation on June 19, 2000 and completed it on July 13, 2000. (N.T. 14-15). His investigation began after he received a complaint from Officer Pretzman on June 19, 2000, relative to sales to minors, sales after hours, possession of alcoholic beverages after 2:30 a.m., failure to vacate and providing entertainment after 2:00 a.m. on June 18, 2000. (N.T. 14-15, 37).

Officer Yonick accompanied a detail of officers who conducted an inspection at Licensee's premises on June 30, 2000 relative to Licensee's operation of under 21 nights. (N.T. 15-16, 50-51). The premises was open and operating when the officers arrived at Licensee's premises at

approximately 12:30 a.m. (N.T. 16). The officers identified themselves to the person in charge of the premises, Mr. Ruddy, who indicated that Licensee was conducting an under 21 night, and that approximately 115 individuals under the age of 21 had been counted on the premises. (N.T. 16, 25-27, 246). The bar area was separated from the under 21 area by an orange, plastic snow fence. (N.T. 20, 57). The fence, which is four feet in height, was doubled to a height of approximately seven feet. (N.T. 57-61). The officers separated adult patrons from those under 21 by asking those over 21 to leave the under 21 area. (N.T. 54-55). Officers counted 244 minors and 15 adult patrons on the licensed premises. (N.T. 20, 27). The officers did not check the patrons' identification. (N.T. 53-55).

Officer Yonick's investigation revealed that Mr. Ruddy hired Annette Sencavage to work the door with someone named Strobel. (N.T. 246-247, 255). Edward Uzdilla was asked by the Gress family, which owns Gold's gym, to chaperone that night, and he was instructed in his duties by Mr. Ruddy. (N.T. 247, 249). Amy Moore, who normally worked as a bartender and who was in the under 21 area, was also instructed by Mr. Ruddy. (N.T. 247, 249, 254-255). William Jordan, a police officer, and

Carlo Pesano also volunteered to chaperone. (N.T. 249, 253). Officer Yonick saw Mr. Jordan outside. (N.T. 254).

At the time of the June 30, 2000 investigation, electronically amplified, heavy metal music, provided by a disc jockey, could be heard outside Licensee's premises at a distance of up to 270 paces from the front of the building. (N.T. 16-17, 19, 27-28, 56-57).

Officer Yonick's June 30, 2000 investigation at Licensee's premises was prompted by problems the Bureau experienced in the past with Licensee's operation of under 21 nights. (N.T. 51). Officer Yonick was in attendance at a June 21, 1999 hearing at which the ALJ commented that Licensee's manner in which it conducted under 21 nights may be illegal. (N.T. 51). That night, Officer Yonick questioned Mr. Ruddy relative to why Licensee continued to operate under 21 nights in the same fashion, in light of the ALJ's comment. (N.T. 51).

During a visit to Licensee's premises on July 13, 2000, Officer Yonick found that Licensee's declaration of age card file contained three incomplete cards dated in 1997. (N.T. 28-30). Twelve of the 21 patrons on Licensee's premises on that date identified themselves to Officer Yonick as

being under the age of 21. (N.T. 30-31). Mr. Ruddy did not indicate that Licensee was operating an under 21 night on that date. (N.T. 33).

During the course of his investigation of Licensee's premises, Officer Yonick received copies of numerous reports from the Kingston Police Department. (N.T. 35). The reports are the basis for the count against Licensee for noisy and disorderly operations. (N.T. 35).

With regard to Licensee's first issue on appeal, the ALJ's denial of Licensee's Petition for his Disqualification was not an error. Licensee's Petition set forth that the ALJ was biased against Licensee and was unable to be impartial relative to this proceeding by virtue of statements he allegedly made on the record, in the matter of Pennsylvania State Police, Bureau of Liquor Control Enforcement v. J.C.J.M. t/a Amnesia, Citation No. 99-1647, in which the ALJ declared that Licensee's under 21 operation was illegal or contrary to law, and that the Bureau or the local police department should scrutinize the operation. (Licensee's Petition for Disqualification of Administrative Law Judge).

A review of the record in Citation No. 99-1647 for that proceeding reveals that, when testimony was presented that Licensee had three employees (some of whom may not have been 25 years of age) chaperone

crowds of what consisted of up to 500 minors, such operation was contrary to the dictates of the Liquor Code, and was illegal. (Licensee's Petition for Disqualification of Administrative Law Judge, Ex. A, p. 169-172, 174-179). The Board finds that the ALJ's commentary relative to its operation of under 21 nights at Licensee's premises was merely a reflection of the law set forth in section 493(14) of the Liquor Code [47 P.S. §4-493(14)], and not activity that reflects illegal bias on the part of the ALJ that would warrant his disqualification from this proceeding. Further, the Bureau or the local police department initiating an investigation as a result of evidence presented at that proceeding does not demonstrate any wrongdoing on the part of the ALJ. It does, however, serve to demonstrate Licensee's failure, despite the clear mandate in the Liquor Code and the warnings presented by the ALJ, to change its manner of operation so as to comply with the Liquor Code.

Relative to the first count of the citation, Licensee argues that there is not substantial evidence on the record to support the ALJ's finding that a 15-year-old female was furnished alcohol by Licensee or its servants, agents or employees. To the contrary, it is undisputed that Ms. Karge was provided at least a sip of a drink by a bouncer while inside the premises on June 17 or 18, 2000, and that she was served at least two other alcoholic beverages by

the bartender, without question or concern as to her age. In addition, she received at least three other alcoholic beverages from someone she identified as being connected to Licensee's operation. There is, therefore, substantial evidence to support the finding that Licensee's servants, agents or employees furnished alcoholic beverages to a 15-year-old minor on June 18, 2000.

Licensee argues, relative to the second count of the citation, that there is not substantial evidence to support the finding that Licensee, by its servants, agents or employees, permitted 257 minors to frequent its licensed premises on June 18, 30 and July 13, 2000. The ALJ sustained this count relative to June 18 and 30, 2000 only. The record clearly demonstrates that at least one 15-year-old minor was on Licensee's premises on June 18, 2000. And, for June 30, 2000, while there was not specific evidence relative to the ages of the individuals present on Licensee's premises, Licensee represented to the Bureau officers that at least 115 of the 244 patrons present were minors. There is, therefore, substantial evidence to support the finding that Licensee's servants, agents or employees permitted minors to frequent its licensed premises on June 18 and 30, 2000.

Relative to the third count of the citation, Licensee argues that there is not substantial evidence to support the finding that Licensee, by its servants,

agents or employees, sold, furnished and/or gave, alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m. on June 18, 2000. However, the record demonstrates that Ms. Karge, a 15-year-old minor, was served two Kamikaze shots, two shots of Baja Rose and a Mad Melon while on Licensee's premises on June 18, 2000 after 2:30 a.m. There clearly is substantial evidence to support the finding that Licensee, by its servants, agents or employees, sold, furnished and/or gave, alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m. on June 18, 2000.

Relative to the fourth count of the citation, Licensee argues that there is not substantial evidence to support the finding that Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for cessation of the service of alcoholic beverages on June 18, 2000. The record, however, reveals that Ms. Karge and Ms. Ranck were invited to and did return to Licensee's premises after 2:15 a.m., and that they remained on the premises until approximately 3:30 a.m., at least one hour after Licensee was required to have patrons vacate its premises. Substantial evidence exists to support the finding that Licensee's servants, agents or employees, failed to require patrons to vacate that part of

the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for cessation of the service of alcoholic beverages on June 18, 2000.

Relative to the fifth count of the citation, Licensee argues that there is not substantial evidence to support the finding that Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. on June 18, 2000. The record clearly demonstrates that Ms. Karge was in possession of a Mad Melon, a Kamikaze shot and two shots of Baja Rose on Licensee's premises after 2:30 a.m. on June 18, 2000. Therefore, there is substantial evidence to support the finding that Licensee's servants, agents or employees permitted patrons to possess alcoholic beverages after 2:30 a.m. on June 18, 2000.

Relative to the sixth count of the citation, Licensee argues that there is not substantial evidence to support the finding that Licensee's establishment was operated in a noisy and/or disorderly manner, on June 28, February 18, 19, 27, March 5, 10, 17, 21, April 6, 7, 8, 9, 13, 15, 16, 20, 21, 27, 28 and May 5, 2000, and that Licensee knew or should have known of a pattern of illegal conduct on the premises. In one respect that is true, because the ALJ sustained the charges relative only to April 6, 9, 15, 16 and

21, 2000. The record shows that, on April 6, 9, 15 and 21, 2000, Kingston police officers witnessed individuals urinating outside, while on Licensee's property. In addition, on April 9, 2000, Kingston police officers observed patrons pushing, shoving and screaming as they exited Licensee's premises. As officers attempted to subdue a fight between some individuals in the parking lot, several fights, consisting of six to ten participants, broke out all over the parking lot, including an altercation between Licensee's security and other individuals, for which the security guard was ultimately taken into custody. On April 16, 2000, a Kingston police officer cited for disorderly conduct an individual he observed throw a bottle of beer in Licensee's parking lot.

As to whether there was a pattern of illegal activity that Licensee knew or should have know about, the record reveals, and the ALJ found, that on at least five different dates, disturbances, including open containers, fights, disorderly conduct, public urination and underage drinking, occurred in Licensee's parking lot. Licensee should have known of the activity in question in light of its prevalence. Further, there was no evidence presented that Licensee took substantial steps to prevent the activity in question. The Board concludes that there is substantial evidence to support the ALJ's findings of

fact, and that Licensee's conduct, or lack thereof, on April 6, 9, 15, 16 and 21, 2000 constitutes operating the licensed establishment in a noisy and/or disorderly manner.

Relative to the seventh count of the citation, Licensee argues that there is not substantial evidence to support the finding that 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 on June 30, 2000. The record clearly demonstrates that Bureau officers could hear amplified music provided by a live band emanating from Licensee's premises on June 30, 2000 at a distance of 270 paces to the front of Licensee's building. This testimony supports the finding that Licensee used or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music could be heard outside on June 30, 2000.

Relative to the eighth count of the citation, Licensee argues that there is not substantial evidence to support the finding that Licensee, by its servants, agents or employees, permitted dancing to recorded music until 3:30 a.m. on June 18, 2000. Ms. Karge testified that she was dancing on Licensee's

premises, to music provided by a disc jockey, until she left at approximately 3:30 a.m. on June 18, 2000. There is, therefore, substantial evidence to support the finding that Licensee permitted dancing to recorded music until 3:30 a.m. on June 18, 2000.

Lastly, Licensee contends on appeal that the penalties imposed by the ALJ are excessive, unreasonable and unconscionable. Section 471(b) of the Liquor Code [47 P.S. §4-471(b)] provides that, upon a finding that a violation of Liquor Code sections 493(1) as it relates to sales to minors, 493(14) and 493(16) have occurred, the ALJ shall prescribe a penalty of a license suspension or license revocation or a fine of not less than \$1,000.00, nor more than \$5,000.00, or both. For all other violations of the Liquor Code or the Board's Regulations, the ALJ shall prescribe a penalty of a license suspension or license revocation or a fine of not less than \$50.00, nor more than \$1,000.00, or both. Furthermore, section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the ALJ shall impose a suspension or revocation if the violation in question is a third or subsequent violation of the Liquor Code within a period of four years. Licensee's fines and suspension for the violations in this citation fall within these ranges, and a suspension must be

imposed pursuant to the Liquor Code because of Licensee's prior violation history.

The Board has no authority to disturb penalties that are within the parameters set forth in the Liquor Code. As long as the penalties chosen are within the statutory parameters, as they are here, they fall under the discretion of the ALJ and the Board will not disturb his decision in that regard.

Based on the foregoing, the decision of the ALJ is affirmed.

## ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee has paid \$8,000.00 of its \$12,000.00 fine. It is hereby ordered that Licensee must pay the amount of \$4,000.00, which constitutes the remainder of its fine, 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 further ordered that the restaurant liquor license of J.C.J.M., Inc., t/a Amnesia, License No. R-3097, be suspended for a period of 61 days beginning at 7:00 a.m. on Monday, February 25, 2002 and ending at 7:00 a.m. on Saturday, April 27, 2002.

Licensee is directed on Monday, February 25, 2002 at 7:00 a.m. to place a Notice of Suspension placard (Form PLCB-1925) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is authorized on Saturday, April 27, 2002 at 7:00 a.m. to remove the Notice of Suspension placard and return its license to its original wall location.

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

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Board Secretary