

Mailing Date: OCT 24 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1272
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-310925
	:	
BOSKET INC.	:	
2057 W. SOMERSET ST.	:	LID - 49426
PHILADELPHIA PA 19132-2640	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-184	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 29, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Bosket, Inc., License Number R-AP-SS-184 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, December 1, 2005, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on May 11 and 15, 2005, Licensee, by its servants, agents or employes, 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.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began May 9, 2005 and ended May 21, 2005. A notice of violation letter was sent to the licensed premises on June 2, 2005 by certified mail, return receipt requested. The mailing was signed as received. A citation dated June 29, 2005 was sent to the licensed premises. The mailing was returned unclaimed. By letter dated October 13, 2005, a citation hearing notice was sent to the licensed premises by both certified mail, return receipt requested and by first class mail. The mailing was returned unclaimed (N.T. 14-15 and Exhibits B-1 and B-2).

2. Enforcement Officer Kareen Davis went to the licensed premise on May 11, 2005 at approximately 8:50 p.m. When he arrived at the premises, he saw the neighborhood. Across the street, he saw a church and small shopping mall. He determined that the area was 85% residential and 15% commercial (N.T. 5-6).

3. Also across the street from the establishment, he noticed the door was halfway open at the time. He was able to hear music coming from the establishment. Must was rhythm and blues and rap music. He was able to hear instruments and vocal. While outside the premises, he paced off ten paces, which is approximately twenty feet east and west on Somerset. The premises sits on the corner of 21<sup>st</sup> and Somerset. From the distances where he paced off, he could hear music coming from the establishment (N.T. 6-7).

4. The premises was open and operating with approximately ten patrons inside. In addition, there was a black non-hispanic female rendering service to alcoholic beverages. The officer observed a wall mounted jukebox approximately twenty feet from the door. The officer observed approximately five speakers (N.T. 8-9).

5. Music that he heard inside the premises was the same as that which he had heard outside (N.T. 9).

6. The officer purchased an alcoholic beverage and departed the premises. Once outside, he paced off again a distance of twenty feet east and west on Somerset where he could still hear music playing (N.T. 9).

7. The officer visited the premises on May 15, 2005 arriving at approximately 12:20 a.m. He noted again that the door was open. He paced off in an easterly and westerly direction approximately twenty feet where he could still hear music emanating from the premises. Again, the music was rhythm and blues. He heard vocals and instrumentals (N.T. 10).

8. The premises was open and operating and there were approximately eight patrons inside and a black female tending bar. While on the premises, he noted that there was a jukebox playing and it was mounted to the wall. He again observed two speakers located at the front entrance and other speakers totaling five, in other areas of the premises. The music that he heard outside was the same that he heard inside the premises (N.T. 11-12).

9. The officer remained on the premises for about an hour. He purchased an alcoholic beverage and later departed the premises. The music was the same. He paced east and west on Somerwest, ten paces where he could still hear music emanating from the premises (N.T. 12).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On May 11 and 15, 2005, Licensee, by its servants, agents or employes, 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

PRIOR RECORD:

Licensee has been licensed since June 13, 2002, and has no record of prior violations.

DISCUSSION:

Music being played on the inside of the premises should not be able to be heard on the outside of the premises. It is this Licensee's responsibility to insure that music is contained within the walls of the premises. In both instances when the officer visited the premises on May 11 and May 15, the door was partially opened. It may, in fact, cure the problem to simply shut the door. If other measures are necessary, then it is the Licensee's responsibility to turn the music down or soundproof the premises so that the music cannot be heard on the streets outside the building or in an adjacent property.

It is noted that Licensee has no prior record. Therefore, a moderate monetary penalty shall be imposed.

Bosket, Inc.  
Citation No. 05-1272

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Bosket, Inc., License Number R-AP-SS-184, pay a fine of Three Hundred Dollars (\$300.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

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 your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

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

Dated this 16<sup>th</sup> day of October, 2006.

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Tania E. Wright, J.

**NOTE:** 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.

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