

Mailing Date: MAR 15 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 05-1799
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident Nos. W01-311167
v.	:	
	:	LID - 52681
C & C MUSIC INDUSTRIES LLC	:	
T/A GSP MUSIC COMPLEX	:	
4100 MAIN ST	:	
PHILADELPHIA PA 19127-1618	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-1708	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued the citation on September 13, 2005. There are two counts in the citation.

The first count alleges that Licensee violated §§401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§4-401(a) and 4-406(a)(1), on June 5, 2005, by selling, furnishing and/or giving alcoholic beverages on a portion of the premises not covered by the license.

The second count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on June 5, 2005, by permitting the use on the inside/outside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

A hearing was held on Tuesday, July 18, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Ryan Burns arrived in the area of the licensed premises at about 11:30 a.m. on June 5, 2005. On Main Street, as one faces the front of building in which Licensee conducts its business, there is a parking area to the left. In that area there was a DJ booth to which was attached a banner advertising radio station WMMR, 93.3 FM. The radio station was broadcasting from this location on that date (N.T. 5-7).

2. The DJ booth was equipped with two loudspeakers, from which the officer could hear music. To the rear of the paved area there was a beer stand tended by a woman wearing a black shirt. There were a number of other employees in the area who also wore black shirts, who were engaged in moving tables and other things. The beer stand was within twenty-five feet of the backside entrance to the licensed premises. The officer purchased a plastic bottle of Michelob Ultra beer (N.T. 8-12).

3. A letter from the Director of Licensing of the PLCB dated July 22, 2004 states that the licensed areas of this premises include an outside serving area 15 by 55 feet. The Board's custodian of records certified that the areas described in the letter were the licensed areas on June 5, 2005. The officer saw the 15 by 55 foot area, where there was an outside deck. The beer stand was not on the deck, but on the paved surface (N.T. 12-14, Exhibit B-3).

4. On June 29, 2005, the Director of Licensing of the PLCB wrote to Licensee advising that its application for extension of license to cover additional premises had been approved. In addition to the 15 by 55 foot area there was now a second outside serving area 16 by 35 feet (N.T. 15-16, Exhibit B-4).

5. A photograph of the rear outside area of the licensed premises taken on June 5, 2005, shows two outside booths labeled with beer logos hard against the building which contains the licensed premises. This photograph accurately represents the area as it appeared on that date (N.T. 23-24, Exhibit L-2).

6. Apart from its close proximity to the licensed premises, there was no indication on the DJ booth of any relationship to Licensee (N.T. 25).

7. The Core States bicycle race was being held on Sunday, June 5, 2005, and the racers passed in front of the licensed premises on Main Street, Manayunk. WMMR was an official sponsor of the race, and had five tents at strategic positions in the city to cover the event. As the racers passed each location, coverage was handed off from one tent to another. WMMR requested two resources from Licensee for this event: the use of electric power and the use of an ISDN line, which had been installed at that location for WMMR's use. There was no contractual relationship between WMMR and Licensee (N.T. 27-29).

8. Since the pending application for extension of premises had not yet been granted, Licensee erected barricades between its licensed serving area and the non-licensed areas of the parking lot (N.T. 30-31, Exhibit L-1).

9. A plot plan prepared by Licensee shows that the area in which beer was sold on June 5, 2005, was within the area then licensed by the Board (N.T. 37-38, Exhibit L-5).

CONCLUSIONS OF LAW:

The preponderance of the evidence does not support the proposition that Licensee violated 47 P.S. §§4-401(a) and 4-406(a)(1), on June 5, 2005.

The preponderance of the evidence does not support the proposition that Licensee violated 40 Pa. Code §5.32(a), on June 5, 2005.

DISCUSSION:

I am persuaded that Licensee's officers took meticulous care to see that alcoholic beverages were served only in licensed areas on June 5, 2005. I think the enforcement officer probably assumed that the outside deck was coterminous with the outside licensed area, but the photographs and plans presented by Licensee persuade me that the beer booths were within a licensed serving area, though not on the deck itself.

Counsel for the Bureau argued that I should find Licensee liable for the second count under the rule of *PSP, BLCE v. Goodfellas, Inc.*, 850 A.2d 868 (Pa. Cmwlth. Ct. 2004), allocatur denied, 871 A.2d 194 (Pa., 2005). In that case the licensee obtained a temporary extension of premises in a field behind its building. In an area adjacent to the extended premises, on land not owned by the licensee, a rock and roll band provided entertainment, using loudspeakers. The licensee argued that the loudspeakers were not on or in its premises, and therefore it was not responsible for the violation. I rejected this argument, as did the Board, the Court of Common Pleas, and Commonwealth Court.

The difference between that case and the present one is that Goodfellas is located in a rural area, surrounded by empty land, with no other attraction anywhere nearby. The bands which performed there did so for the benefit of Goodfellas' customers and no one else. In the present case, a radio station with no connection to Licensee used loudspeakers as a part of its coverage of a bicycle race seen by thousands of people, only a tiny proportion of whom were Licensee's customers. The fact that Licensee accommodated WMMR with electric power and a digital telephone line is incidental, and does not establish that the loudspeakers were being used with Licensee's permission or for its benefit.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 05-1799 is DISMISSED.

Dated this 8th day of March, 2007.

David L. Shenkle, J.

jb

NOTICE: 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.