

Mailing Date: AUG 18 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2500
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-312491
v.	:	
	:	LID - 47478
BIJOU LLC	:	
927-939 N DELAWARE AVE	:	
PHILADELPHIA PA 19123-3110	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-15561	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

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

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on December 5, 2005. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on July 2 and August 21, 2005, by permitting the use on the inside 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 June 7, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation, and to a summary of facts.

FINDINGS OF FACT:

1. On July 2, 2005, Liquor Enforcement Officers Burns and Harris arrived at the licensed premises at 12:35 a.m. and heard music emanating from it at a distance of two hundred twenty-five feet. Officer Burns entered the premises and heard the same music coming from loudspeakers inside.

2. On August 21, 2005, at 11:00 p.m., Liquor Enforcement Officer T. Cook heard music coming from loudspeakers inside the licensed premises at a distance of two hundred feet.

CONCLUSIONS OF LAW:

Sustained as charged.

NOTICE OF ASSESSMENT OF POINTS PURSUANT TO ACT 239 OF 2004

Section 479 of the Liquor Code, 47 P.S. §4-479, establishes a numerical system for use in cities of the first class. Every restaurant and eating place licensee in cities of the first class who has been cited for a violation of §471 of the Liquor Code, 47 P.S. §4-471, on or after February 6, 2005, must have points assessed as of the date of the final adjudication. Points are in addition to other provisions of the Liquor Code regarding license transfer and renewal. Points are required to be assigned in addition to a monetary penalty and/or suspension and/or revocation of the license by the administrative law judge.

An enhanced penalty violation requires that the administrative law judge assign five to ten points, depending upon the circumstances surrounding the violation, to a license record, for each and every enhanced penalty violation. The Board has by regulation established a point system ranging from one to five points for other violations of the Liquor Code and Regulations not specifically set forth in §479.

Section 481(a), 47 P.S. §4-481(a) provides that when any license accumulates ten points or more, the administrative law judge must require the license holder to become compliant with and remain compliant with the provisions of §471.1, 47 P.S. §4-471.1, relating to the Responsible Alcohol Management Program (R.A.M.P.). Failure to comply with such an order within ninety days will result in two additional points being assessed against the license record.

Section 481(b), 47 P.S. §4-481(b) provides that when any license accumulates fifteen points or more, the administrative law judge must place the license in safekeeping. The license can only be removed from safekeeping upon approval by the board of a transfer to a disinterested third party. Upon completion of the transfer, the points assigned to it will be reduced to ten. If, within ninety days of the transfer the new owner voluntarily becomes compliant with and remains compliant with the responsible alcohol management provisions of §471.1, two additional points will be removed from the license record.

Notwithstanding other provisions of the Act, §481(c), 47 P.S. §4-481(c), provides that when any license accumulates twenty or more points in more than one citation, the administrative law judge must revoke the license.

PRIOR RECORD:

Licensee has been licensed since December 20, 2001, and has had one prior violation:

Citation No. 04-2031. \$500.00 fine.

1. Loudspeakers could be heard outside. August 30, 2004.
2. Failed to constantly and conspicuously expose liquor license under a transparent substance. October 22, 2004.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bijou, LLC, License No. R-AP-SS-15561, shall pay a fine of six hundred dollars (\$600.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that one (1) point is hereby assessed against the record of Licensee, Bijou, LLC, License No. R-AP-SS-15561, as required by 40 Pa. Code §3.122(d).

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 to:

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

Dated this 28<sup>th</sup> day of July, 2006.

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David L. Shenkle, J.

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**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.**