

Mailing Date: NOV 01 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0095
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-322947
v.	:	
	:	LID - 36494
STAGES ENTERTAINMENT	:	
COMPANY INC	:	
101 JACKSON ST	:	
PORT CARBON PA 17965-1808	:	
	:	
	:	
SCHUYLKILL COUNTY	:	
LICENSE NO. H-AP-SS-1957	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.  
For Licensee: James Conville, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on January 27, 2006. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on December 18, 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 Friday, July 28, 2006, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

Liquor Enforcement Officer Jamie Rhinehammer arrived in the area of the licensed premises at about 1:14 a.m. on December 18, 2005. He heard music coming from the establishment as far as seventy-five paces distant. Entering, Officer Rhinehammer saw that the music he had heard outside was coming from loudspeakers inside the premises (N.T. 6-7).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since March 14, 1996, and has had seven prior violations:

Citation No. 01-0106. \$350.00 fine.

1. Loudspeakers could be heard outside.  
November 17, 30, December 7 and 14, 2000.
2. Not a *bona fide* hotel (insufficient bedrooms). December 14 and 15, 2000.

Citation No. 02-0151. \$500.00 fine.

1. Loudspeakers could be heard outside. December 6, 2001.

Citation No. 02-1184. \$800.00 fine.

1. Loudspeakers could be heard outside. April 26 and May 23, 2002.

Citation No. 04-1941. \$250.00 fine.

1. Gambling (tickets). October 7, 2004.

Citation No. 05-0353. \$1,850.00 fine.

1. Sales to a visibly intoxicated person. January 1, 2005.
2. Loudspeakers could be heard outside. December 31, 2004 and January 1, 2005.
3. Discounted the price of alcoholic beverages after midnight. January 1, 2005.
4. Unlimited or indefinite amount of alcoholic beverages for a fixed price.  
December 31, 2004 and January 1, 2005.

Citation No. 05-1536. \$1,250.00 fine and 1 day suspension.

1. Sales to a minor. June 17, 2005.

Citation No. 05-2370. \$750.00 fine.

1. Loudspeakers could be heard outside. September 24, 2005.

#### DISCUSSION:

Licensee's manager testified that they had insulation installed to correct the noise problem "a couple years back" on a date she did not recall (N.T. 14). Prior to the hearing, Licensee's counsel filed a prehearing memorandum indicating that Licensee would present "billing statements from contractor representing work done on the establishment in order to soundproof and prevent noise from emanating from the premises."

Unfortunately, no such statements were submitted. I mention this because "a couple years back" would certainly have included the violations of December 31, 2004, and January 1, 2005, as well as the one of September 24, 2005. Licensee's manager testified that she has held that position since 1996 or 1997, so these previous problems certainly occurred on her watch.

Under these circumstances, I found that the testimony of Licensee's manager was not credible. The testimony of a neighbor, that he was not awakened from sleep during the hours when the officer heard music from loudspeakers emanating from the premises, is of limited utility and did not outweigh, in my mind, the evidence of the Bureau.

It is past time for this Licensee to recognize that it has a problem which needs to be addressed with something more substantial than wishful thinking. I mention this because it is obvious that the Bureau has this licensed premises in its sights: three additional citations have now been filed, which Licensee should know of at this point, because of the requirement that the Bureau notify Licensee of its findings.

These citations, which allege loudspeaker violations on April 8 and 9, April 22 and 23, and June 4, 2006, naturally have no bearing on my decision in this case; I presume, as I must, that Licensee is not guilty of these violations until the Bureau proves otherwise.

However, should these citations result in further violations it will become clear to the judges rendering those decisions that this Licensee is a chronic problem in this respect. Either those judges making future decisions or the PLCB itself, acting on the pattern of repeated violations so found, might conclude at some point that this license should no longer exist.

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, Stages Entertainment Company, Inc., License No. H-AP-SS-1957, pay a fine of one thousand dollars (\$1,000.00) 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.

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 24<sup>th</sup> day of October, 2006.

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David L. Shenke, 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.**