

Mailing Date: DEC 21 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1482
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-331920
	:	
ORTEGA R BAR &	:	
RESTAURANT INC.	:	LID - 52648
965 E. RUSSELL ST.	:	
PHILADELPHIA PA 19134-1312	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-429	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD TARASKUS, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 30, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Ortega R Bar & Restaurant, Inc., License Number R-429 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, April 18, 2007, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains four counts.

The first count 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 7, 2006, 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.

The second count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(2) and 4-493(16), in that on May 7, 2006, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on May 7, 2006, 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 the cessation of the service of alcoholic beverages.

The fourth charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on May 7, 2006, Licensee, by its servants, agents or employees, 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.

COUNT NOS. 1, 2, 3 AND 4

FINDINGS OF FACT:

1. Officer David Collins from the Bureau of Enforcement conducted an investigation on May 7, 2006 in an undercover capacity (N.T. 6).
2. Officer Collins arrived at the licensed premises at approximately 2:10 a.m., accompanied by Officer K. Davis. The officer parked across the street from the premises and as he left his vehicle, he overheard loud music emanating from the licensed premises. There were no other licensed premises open or operating in the area at the time (N.T. 7).
3. Officer Collins paced off thirty-two feet on I Street and forty-two feet in the opposite direction. During that time, he heard loud music coming from inside the licensed premises. He kept time by his cell phone and noted that the time was approximately 2:15 a.m. (N.T. 7-8).

4. When the officer entered, he noticed that there were approximately three patrons at the bar. During his visit, he ordered two Corona beers and paid for them at approximately 2:17 a.m. He noted that the cash register was still operational (N.T. 9-10).

5. After he had made the purchase of an alcoholic beverage at 2:17 a.m., the officer ordered saw other individuals ordering mixed drinks from the bar (N.T. 10-11).

6. The officer made no additional purchases of alcohol, but remained on the premises until approximately 2:40 a.m. (N.T. 11).

7. During the time the officer was on the premises, he noted that there was a Hispanic female playing music through amplified speakers. He noted two large black speakers approximately four feet by two feet on the premises. He determined that the music inside was the same music that he had heard outside the premises (N.T. 11).

8. When the officer departed the premises, the music had stopped playing. When the officer left, there were still patrons inside the premises consuming alcoholic beverages (N.T. 11-12).

CONCLUSIONS OF LAW:

Count No. 1 - On May 7, 2006, 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).

Count No. 2 - On May 7, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(2) and 4-493(16).

Count No. 3 - On May 7, 2006, 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. Section 4-499(a).

Count No. 4 - On May 7, 2006, 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. Section 4-499(a).

PRIOR RECORD:

Licensee has been licensed since September 15, 2004, and has a record of prior violations as follows:

Citation No. 06-1135. \$6,300.00 fine and one day suspension.

1. Used loudspeakers or devices whereby music could be outside.
March 11, 2006.
2. Sales to minors.
March 17 and 18, 2006.
3. Minors frequenting.
March 17 and 18, 2006.
4. Employed or permitted a minor under 18 years of age to render service in connection with the service of alcoholic beverages.
March 17 and 18, 2006.

DISCUSSION:

Maria Reyes is the owner of the premises and claimed that she was in fact on the premises on May 7, 2006 but did not see the officer. She indicated that there is always another female who may have been tending bar. She also denied that there was a female disc jockey on the premises and indicates that at times she does hire a male disc jockey. Nevertheless, the Court found that the officer was credible in his testimony and that he was on the premises on the evening of May 7, 2006, heard music outside the premises, which emanated from inside the premises, and that the premises was serving after the legal time for cessation of sales of alcoholic beverages.

Under the circumstances, monetary penalties shall be imposed. In reviewing the prior record, it is noted that Licensee has a violation for loudspeaker, sales to minors, minors frequenting and employing a minor under the age of eighteen years old.

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 Count Nos. 1, 3 and 4 of this case.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 2 of this case.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$400.00.
- Count No. 2 - \$1,000.00.
- Count No. 3 - \$250.00.
- Count No. 4 - \$250.00.

Ortega R Bar & Restaurant, Inc.
Citation No. 06-1482

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Ortega R Bar & Restaurant, Inc., License Number R-429, pay a fine of One Thousand Nine Hundred Dollars (\$1,900.00) 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.

Dated this 20th day of December, 2007.

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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Detach Here and Return Stub with Payment

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

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