

Mailing Date: MAR 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 06-1692
LIQUOR CONTROL ENFORCEMENT	:	& 06-2366C
	:	(consolidated for adjudication only)
v.	:	
	:	Incident Nos. W01-332949
CAPOZZOLI BAR CORPORATION	:	W01-338720
1200 E PASSYUNK AVE	:	
PHILADELPHIA PA 19147-5013	:	LID - 17430
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-OPS-15577	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: Louis Capozzoli (president)

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued these citations on July 17 and October 11, 2006, respectively. The citations allege as follows:

CITATION NO. 06-1692

This citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on May 20 and June 16, 2006, 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.

CITATION NO. 06-2366C

This citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on August 24, 2006, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, nineteen years of age.

A hearing was held on Wednesday, January 10, 2007, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letters and the citations.

FINDINGS OF FACT:

CITATION NO. 06-1692

1. Liquor Enforcement Officer John Conner entered the licensed premises at about 8:45 p.m. on May 20, 2006. At about 9:05 p.m. a band called "Three Eyed Jacks" began to play, using loudspeakers. The band was still playing when the officer left at 9:35, and he could hear it as far away as 120 feet from the premises (N.T. 5-7).

2. Officer John Conner returned to the licensed premises at about 11:00 p.m. on June 16, 2006. A Karaoke DJ began to provide entertainment, using loudspeakers. The music could be heard outside, as far away as 120 feet from the premises (N.T. 9-11).

CITATION NO. 06-2366C

On August 24, 2006, a young man whose birth date was January 31, 1987, purchased beer in the licensed premises. His age was not questioned.

CONCLUSIONS OF LAW:

Both citations are 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 February 8, 1975, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 95-2284. \$500.00 fine.

1. Sold liquor for consumption off premises.
2. Sold alcoholic beverages on credit.

Citation No. 05-0602. \$200.00 fine.

1. Sold liquor for consumption off premises. January 15, 2005.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in these cases. For violations of the type found in Citation No. 06-1692, any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in Citation No. 06-2366, any fine must be in the \$1,000.00 to \$5,000.00 range.

I consider Licensee's immediate response to the problems reflected in these citations to be a mitigating factor. Licensee became certified under the provisions of 47 P.S. §4-471.1 on November 28, 2006.

Penalties are assessed as follows:

Citation No. 06-1692 – a fine of \$200.00 and one point under Act 239.

Citation No. 06-2366C – a fine of \$1,000.00 and five points under Act 239.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Capozzoli Bar Corporation, License No. R-AP-OPS-15577, shall pay fines totaling twelve hundred dollars (\$1,200.00) within 20 days of the mailing date of this order. In the event the fines are not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that a total of six (6) points are hereby assessed against the record of Licensee, Capozzoli Bar Corporation, License No. R-AP-OPS-15577, as required by 40 Pa. Code §3.122(d) and 47 P.S. §479(b)(1).

The fines 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 19th 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.