

Mailing Date: OCT 15 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2612
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-341772
v.	:	
	:	LID - 50948
D-FIVE, INC.	:	
T/A BUBBA'S BEER BELLY	:	
494 W. LINCOLN AVE.	:	
MYERSTOWN, PA 17067-2327	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. R-AP-18496	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
Paul A. Donahue, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 16, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against D-FIVE, INC., License Number R-AP-18496 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on October 14, 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.

The investigation which gave rise to the citation began on October 14, 2006 and was completed on October 14, 2006; and notice of the violation was sent to Licensee by Certified Mail on October 26, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on May 3, 2007 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On October 14, 2006 at 10:45 p.m. an officer of the Bureau arrived in the area of the licensed premises. Upon parking his vehicle he immediately heard music emanating from the licensed premises (N.T. 9-10).

2. The officer conducted a sound check and could hear music emanating from the licensed premises at distance up to 130 feet (N.T. 10).

3. The officer then entered the licensed premises where he observed a DJ playing music that was amplified through loudspeakers (N.T. 10).

4. The officer departed the licensed premises at 11:40 p.m. and conducted a sound check. He could hear music emanating from the licensed premises at distances up to 236 feet (N.T. 11-12).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since April 9, 2003, and has had two prior violations:

Citation No. 06-0774. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside. October 21, 22, November 13, 23, December 23, 30, 31, 2005 and January 21, 2006.
2. Noisy and/or disorderly operation. December 23, 30, 31, 2005 and January 21, 2006.

Citation No. 06-2260. Fine \$300.00.

1. Used loudspeakers or devices whereby music could be heard outside. July 1, 2006.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$500.00.

ORDER

THEREFORE, it is hereby ordered that Licensee D-FIVE, INC., pay a fine of \$500.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 4th day of October, 2007.

Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.