

Mailing Date: SEPT 24 2009

[Appeal 07-0832](#)  
[Appeal 07-1769](#)  
[Appeal 07-3135](#)  
[Appeal 08-2096](#)  
[Appeal 08-3019](#)

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF :  
LIQUOR CONTROL ENFORCEMENT :

v. :

GERMAINE M MARCANO :  
T/A RENAISSANCE BISTRO :  
550-552 N 3RD ST :  
READING PA 19601-2815 :

Citation No.	Incident No.
07-0832	W09-346058
07-1769	W09-354505
07-3135	W09-359645
08-2096	W09-369705
08-3019	W09-379774

(consolidated for adjudication only)

LID - 49634

BERKS COUNTY :  
LICENSE NO. R-AP-SS-15015 :

JUDGE SHENKLE  
BLCE COUNSEL: Roy Harkavy, Esq.  
LICENSEE COUNSEL: George A. Gonzalez, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued five citations to Licensee, each of which alleges that she violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), 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. The details are as follows:

Citation No.	Date(s) of Alleged Violations
07-0832	January 26, February 9 and 10, 2007
07-1769	April 6, June 2 and 16, 2007
07-3135	August 25, September 7, 8, October 7 and November 2 and 30, 2007
08-2096	March 15, 2008
08-3019	November 27, 2008

A hearing was held on July 31, 2009, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. On January 26, 2007, a liquor enforcement officer arrived at the licensed premises at about 8:40 p.m. He parked in Licensee's parking lot, and as he got out of his vehicle he heard music emanating from the licensed premises. The officer found that the music could be heard at a distance of 120 feet. He entered the premises and heard the same music inside, coming from loudspeakers being used by a disk jockey (N.T. 5-7).

2. On February 9, 2007, the officer arrived at the premises at 11:40 p.m. and made the same observations as on January 26. He left the premises after midnight, and again heard music from Licensee's loudspeakers outside, at a similar distance (N.T. 8-11).

3. On April 6, 2007, a lieutenant of the City of Reading Police Department responded to a complaint from a person who lives near the licensed premises. He went to this person's residence and heard a bass beat emanating from the premises. He could tell this because the volume of the sound changed in time with the opening and closing of Licensee's door. The lieutenant caused uniformed police to respond (N.T. 17-19).

4. On June 2, 2007, a liquor enforcement officer arrived at the premises at about 11:00 p.m. and heard music emanating from it, as far as 90 feet away. He entered the premises and found that the music he heard outside was coming from at least four loudspeakers (N.T. 15).

5. On June 16, 2007, a liquor enforcement officer arrived at the premises at about 10:45 p.m. and heard music emanating from it, as far as 75 feet away. He entered the premises and found that the music he heard outside was coming from at least four loudspeakers (N.T. 15).

6. On August 25, 2007, a liquor enforcement officer arrived at the premises at about 12:30 a.m. and heard music emanating from it, as far as 180 feet away. He entered the premises and found that the music he heard outside was coming from loudspeakers inside (N.T. 24-25).

7. On September 7, 2007, a liquor enforcement officer arrived at the premises at about 11:30 a.m. and heard music emanating from it, as far as 235 feet away. He entered the premises and found that the music he heard outside was coming from loudspeakers inside. He left the premises after midnight, and again heard music from Licensee's loudspeakers outside, at a similar distance (N.T. 25-27).

8. On October 7, 2007, a liquor enforcement officer arrived at the premises at about 1:25 a.m. and heard music emanating from it. He entered the premises and found that the music he heard outside was coming from loudspeakers inside (N.T. 27-28).

9. On November 2, 2007, a liquor enforcement officer arrived at the premises at about 10:45 p.m. and heard music emanating from it, as far as 207 feet away. He entered the premises and found that the music he heard outside was coming from loudspeakers inside (N.T. 28-29).

10. On November 27, 2007, a liquor enforcement officer arrived at the premises at about 10:45 p.m. and heard music emanating from it, as far as 80 paces away. He entered the premises and found that the music he heard outside was coming from loudspeakers inside (N.T. 40-41).

11. On November 30, 2007, a liquor enforcement officer arrived at the premises at about 10:15 p.m. and heard music emanating from it, as far as 150 feet away. He entered the premises and found that the music he heard outside was coming from loudspeakers inside (N.T. 29-30).

12. On March 15, 2008, a liquor enforcement officer arrived at the premises at about 8:15 p.m. and heard music emanating from it, as far as 90 feet away. He entered the premises and found that the music he heard outside was coming from loudspeakers inside (N.T. 34-35).

13. Licensee has owned this business for the last nine years. She never used to have problems with noise complaints, and the reason they arose in 2007 was that the building was under construction, in her opinion. Before the renovation undertaken in the Summer of 2006, the ceiling was low, and everything was cramped. Construction was still going on as of the date of the hearing, in that stuff done to the building needed work (N.T. 43-45).

14. After the renovation, the ceiling was substantially higher. Licensee became concerned about noise, and so hired a sound engineer to make recommendations to avoid violations. The engineer suggested using different speakers and changing the entrance. Licensee has followed this advice, and now no longer employs disk jockeys (N.T. 45-53).

CONCLUSIONS OF LAW:

In each of these five citations I find that the Bureau has proven the violations as charged.

PRIOR RECORD:

Licensee has been licensed since May 24, 2002, and has had prior violations as follows:

Citation No. 06-0149. \$750.00 fine.

1. Noisy and/or disorderly operation.

On 18 dates between October 19 and December 22, 2005.

Citation No. 06-0783. \$1,550.00 fine.

1. Loudspeakers could be heard outside. February 19, 2006.
2. Sales to minors. February 18 and 19, 2006.

Citation No. 06-2457. \$1,000.00 fine.

1. Sunday sales after 2:00 a.m. September 3, 2006.

Citation No. 07-1308. \$200.00 fine.

1. Breached agreement with Board. May 3, 2007.

Citation No. 07-2864X. \$100.00 fine.

1. Bad checks for malt or brewed beverages. September 5, 2007.

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. Penalties are assessed as follows:

Citation No.	Penalty
07-0832	a fine of \$400.00.
07-1769	a fine of \$500.00.
07-3135	a fine of \$600.00.
08-2096	a fine of \$200.00.
08-3019	a fine of \$200.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Germaine M. Marcano, t/a Renaissance Bistro, License No. R-AP-SS-15015, shall pay a fine of one thousand nine hundred dollars (\$1,900.00) 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.

Dated this 15<sup>TH</sup> day of SEPTEMBER, 2009.



David L. Shenle, 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.**

Detach Here and Return Stub with Payment

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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

Citation Nos. 07-0832, 07-1769, 07-3135, 08-2096 & 08-3019 Germaine  
M. Marcano