

Mailing Date: November 18, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 07-0832
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
GERMAINE M. MARCANO	:	
t/a RENAISSANCE BISTRO	:	License No. R-15015
550-552 N. THIRD ST.	:	
READING, PA 19601-2815	:	
	:	

Counsel for Licensee: George A. Gonzalez, Esquire  
534 Washington Street  
Reading, PA 19601

Counsel for Bureau: Roy Harkavy, Esquire  
Pennsylvania State Police,  
Bureau of Liquor Control Enforcement  
7448 Industrial Parkway  
Macungie, PA 18062

**OPINION**

Germaine M. Marcano, t/a Renaissance Bistro (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge David L. Shenkle

("ALJ"), wherein the ALJ sustained the citation and imposed a fine in the amount of four hundred dollars (\$400.00)<sup>1</sup>.

The citation charged Licensee with violating section 5.32(a) of the Liquor Control Board Regulations in that on January 26, February 9 and 10, 2007, Licensee permitted the use of a loudspeaker or a similar device on the licensed premises whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside. [40 Pa. Code § 5.32(a)].

Pursuant to section 471 of the Liquor Code, the appeal in this case must be based solely on the record before the ALJ. [47 P.S. § 4-471]. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his/her discretion, or if his/her decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 484 A.2d 413 (Pa. Cmwlth. 1984).

In her appeal, Licensee argues that the decision of the ALJ was not based on substantial evidence because the testimony established that the only

---

<sup>1</sup> This case is one of five (5) citations that was decided based on an evidentiary hearing held on July 31, 2009. The aggregate fine for all five cases was one thousand nine hundred dollars (\$1,900.00).

reason music could be heard outside the licensed premises was because the building was under construction.

The Board has reviewed the record, including the ALJ's Adjudication and Order, with Licensee's contentions in mind, and has concluded that the ALJ's decision is supported by substantial evidence.

The record reveals that Officer David Daza of the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") testified regarding the incidents in question. On January 26, 2007, Officer Daza visited the licensed premises. [N.T. 6]. He testified that he could hear music while standing in the parking lot. [N.T. 6, 7]. Once inside the premises, he confirmed that a DJ was playing music that was electronically amplified through loudspeakers. [N.T. 7].

Officer Daza left the licensed premises and walked away from the building on Third Street. [N.T. 7]. The officer testified that he could hear music as far away as one hundred thirty-five (135) feet. [N.T. 7]. Officer Daza returned to the establishment on February 9 and 10, 2007. [N.T. 8, 10]. Again he heard loud music while standing outside the building and he observed a DJ inside the building playing music that was amplified through "two by three, big-size speakers." [N.T. 8-10].

The Board now turns its attention to the issue raised in Licensee's appeal. Because Licensee's argument fails to offer a defense to the requirements of the regulation, the Board must reject it. Licensee claims that it was the condition of the building that facilitated the music being heard outside. Pursuant to section 5.32(a), a licensee is not permitted to use or allow others, such as a DJ, to use a loudspeaker whereby the sound of music can be heard on the outside of the licensed premises. [40 Pa. Code. § 5.32(a)]. Ultimately, Licensees are strictly liable for violations of the Board's Regulations. Pennsylvania Liquor Control Board v. T.L.K., 544 A.2d 931 (Pa. 1988). The testimony of Officer Daza established that on each of the three (3) days in question, music being played through a loudspeaker inside the licensed premises could be heard on the outside of the building. If a building is under construction and the walls or ceiling are thin, it is the licensee's duty to make sure the volume of the music is at a level that cannot be heard outside. Building conditions cannot excuse the improper actions of the licensee.

Based on the foregoing, the Board concludes that the evidence submitted by the Bureau was sufficient to support a violation of section 5.32(a) and affirms the decision of the ALJ to sustain the citation.

**ORDER**

The decision of the ALJ in regard to Citation No. 07-0832 is affirmed.

The appeal of the Licensee is denied.

The fine has been paid in full.

---

Board Secretary