

Mailing Date: JAN 24 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1379
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-354006
v.	:	
	:	LID - 56622
PPF LLC	:	
T/A MARGARITA VILLE	:	
2200-02 E CARSON STREET	:	
PITTSBURGH PA 15203-2108	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-12835	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Emily Gustave, Esquire

For Licensee  
No Appearance.

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on June 25, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against PPF LLC, t/a Margaritaville, License Number R-AP-SS-12835 (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 May 13, 2007, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

An administrative hearing was conducted on December 4, 2007, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on May 13, 2007, and completed its investigation on May 13, 2007. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated May 31, 2007, which was sent by certified mail and returned unclaimed. (Exhibit C-2)
3. The citation was issued on June 25, 2007, and was sent by certified and returned unclaimed and by first class mail on July 26, 2007. (Exhibits C-3, C-4)
4. Licensee's true and correct address as listed on its Renewal Application for the term ending May 31, 2009, is PPF LLC, t/a Margaritaville, 2200-02 E. Carson Street, Pittsburgh, PA 15203-2108. (Exhibit C-5)
5. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on October 26, 2007 by certified mail and first class mail.
6. The aforementioned certified and first class mailings of the notice of hearing were returned unclaimed.
7. The notice relative to the date, time and place of the evidentiary hearing was also mailed to Licensee's President Jeannine Coller, 1263 Wisconsin Avenue, Pittsburgh, PA 15216, on November 27, 2007, by certified mail and first class mail, which were not returned.
8. On May 13, 2007 at 12:15 a.m., Liquor Enforcement Officer E. M. Ferchak accompanied by fellow Enforcement Officer Joos and officers with the Pittsburgh Police Department approached Licensee's premises and heard the sound of amplified music emanating from within the premises at distances of approximately 75 feet along Carson Street in directions east and west of the front door. Officer Ferchak noted that the front door of the premises was propped open. (N.T. 8-9)
9. The officers entered Licensee's premises after identifying themselves to the doorperson. Officer Ferchak spoke with the person in charge identified as Jennifer Lynn McLaughlin and advised her of the loud amplified music heard outside the premises. Officer Ferchak further recommended that the front door to the premises remain closed. (N.T. 8-9)

10. The officers departed Licensee's premises at 12:20 a.m., at which time the sound of this amplified music was not able to be heard outside as the front door was closed and the volume of the amplified music was lowered.

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On May 13, 2007, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of its 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.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

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.

This court is of the opinion that the nature of this violation is a significant one, in that those individuals who reside or conduct their businesses within the community have the right to proceed with their personal and/or business affairs without the intrusion of such "noise pollution."

The record discloses that Licensee has failed to submit a pre-hearing memorandum as directed in a Notice issued by this court on August 7, 2007. Moreover, Licensee's failure to appear at the administrative hearing demonstrates a clear lack of interest in this liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of \$500.00.

PPF LLC  
Citation Number 07-1379

ORDER:

THEREFORE, it is hereby ordered that PPF LLC, t/a Margaritaville, License Number R-AP-SS-12835, 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.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 17<sup>th</sup> day of January, 2008.

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Roderick Frisk, J.

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NOTE: 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.

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 No. 07-1379, PPF LLC