

Mailing Date: JAN 4 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1402
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-354822
v.	:	
	:	LID - 13971
SANDRA F WILSON	:	
T/A ONYX INN	:	
1011 E CARSON STREET	:	
PITTSBURGH PA 15203-1109	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-9728	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Nadia Vargo, Esquire

For Licensee
Sandra F. Wilson,
Pro Se

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 Sandra F. Wilson, t/a Onyx Inn, License Number R-AP-9728 (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 26, 2007, Licensee, by her servants, agents or employees, used, or permitted to be used on the inside of her 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 November 27, 2007, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee Sandra F. Wilson appeared on her own behalf.

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 26, 2007, and completed its investigation on May 26, 2007. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated June 1, 2007, which was sent by certified mail and received by Licensee. (N.T. 6)
3. The citation was issued on June 25, 2007, and was sent by certified mail and received by Licensee. (Exhibits C-2, N.T. 6)
4. On May 26, 2007 at 1:25 a.m., Liquor Enforcement Officer Charles J. Rubino accompanied by officers from the Pittsburgh Police Nuisance Bar Task Force heard the sound of amplified music while approaching the front door of Licensee's premises. (N.T. 9-11, 16)
5. The officers conducted an outside surveillance of Licensee's premises and heard amplified music emanating from within Licensee's premises at distances of approximately one-half block in directions east and west of the front door of the premises as well as approximately half way across E. Carson Street directly in front of the premises. (N.T. 9-10)
6. Officer Rubino approached the front door of Licensee's premises, which was propped open and briefly discussed the amplified music with Licensee Sandra F. Wilson. At this time, Officer Rubino verified that the source of this music resulted from music being broadcast from a juke box located on the premises. (N.T. 10)
7. Officer Rubino departed the area of Licensee's premises at approximately 1:35 a.m. with the sound of the amplified music from within Licensee's premises not audible from outside with the premises door closed. (N.T. 10-11, 16)
8. The community surrounding Licensee's premises is approximately 80 percent commercial and 20 percent residential. (N.T. 14)

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 26, 2007, Licensee, by her servants, agents or employees, used, or permitted to be used on the inside of her 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 concludes 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).

PRIOR RECORD:

Licensee has been licensed since April 3, 1984, and has had one prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 96-0070. Fine \$150.00 and seven days suspension.

1. Used loudspeakers or devices whereby music could be heard outside.
2. Permitted dancing and/or entertainment without an Amusement Permit.
3. Permitted lewd, immoral or improper entertainment.
4. Permitted entertainers to contact or associate with patrons.

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.

In mitigation, the record discloses that Licensee has had no prior violations since 1996.

For the foregoing reasons, a penalty shall be imposed in the amount of \$150.00.

SANDRA F. WILSON
Citation Number 07-1402

ORDER:

THEREFORE, it is hereby ordered that Sandra F. Wilson, t/a Onyx Inn, License Number R-AP-9728, pay a fine of \$150.00 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 2nd day of January, 2008.

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

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. 07-1402, Sandra F. Wilson