

Mailing Date: APR 9 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1723
LIQUOR CONTROL ENFORCEMENT	:	Citation No. 07-2027C
	:	
v.	:	Incident No. W01-350351
	:	Incident No. W01-358339
	:	
	:	LID – 56369
	:	
4 MY GIRLS INC.	:	
4731-33 LEVICK ST.	:	As Consolidated Under
PHILADELPHIA, PA 19135-3342	:	Citation No. 07-1723
	:	
	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-7633	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
James E. Dailey, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Third Floor
Philadelphia, PA 19142

For Licensee
Edward B. McHugh, Esquire
Two Greenwood Square
Suite 450
3331 Street Road
Bensalem, PA 19020

ADJUDICATION

BACKGROUND:

This proceeding arises out of two citations that were issued by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against 4 My Girls Inc. (Licensee), License Number R-AP-SS-EHF-7633.

Citation No. 07-1723¹

This citation was issued on August 14, 2007 and charges Licensee with violations of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on May 24 and June 21, 2007, Licensee, by servants, agents or employes, 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.

Citation No. 07-2027C²

This citation was issued on September 7, 2007 and charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on July 26, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, nineteen (19) years of age.

An evidentiary hearing was conducted on February 25, 2008 at the Philadelphia State Office Building, 1400 Spring Garden Street, 13th Floor, Room #2, Philadelphia, Pennsylvania.

Licensee motioned to consolidate the two citations. As the Bureau had no objection, I granted said Motion.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 17, 2007 and completed it on July 27, 2007. (Commonwealth Exhibit No. B-1, N.T. 5 and 38)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 3, 2007 and August 9, 2007. The notices alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 1 and 38)

1. Commonwealth Exhibit No. B-2, 07-1723, N.T. 5

2. Commonwealth Exhibit No. B-2, 07-2027C, N.T. 38

Count No. 1:

3. In addition to April 4, 2007, April 12, 2007 and May 4, 2007, when no violations were observed, a Bureau Enforcement Officer parked her vehicle across the street from the licensed premises at approximately 9:00 p.m., on May 24, 2007. The door of the licensed premises was wide open. The Officer heard music emanating from the premises about 30 feet there from. The Officer determined the music was being provided inside the premises by a jukebox which provided electronically amplified music. (N.T. 9-14)

4. As the Officer departed the premises at 10:00 p.m., the music was still heard outside the premises.

5. The Officer returned to the area of the premises on June 21, 2007 at 11:00 p.m. The Officer parked her vehicle in almost the same spot as the previous visit. The Officer heard music emanating from the premises. The Officer entered and determined the music was being provided by a jukebox using an amplification system. (N.T. 16-18)

6. Licensee's Sole Corporate Officer Ms. C., is an Officer in the local Civic Association. The disturbances caused by Licensee are in direct conflict in what Ms. C. is trying to do with the neighborhood. Ms. C. lives in the neighborhood. (N.T. 25-27)

7. Ms. C. has a problem with her staff. She visits the premises and advises her staff to shut the door and turn down the music. When she leaves, her staff disregards her instructions. (N.T. 28-29)

8. Ms. C. had the jukebox vendor place an internal control on the volume. The vendor disabled the manual volume control. Three of the speakers do not work. (N.T. 31-32)

Count No. 2:

9. Pursuant to the Bureau's Age Compliance Check program, on July 26, 2007, a nineteen year old entered the licensed premises. She sat at the bar and ordered a twelve ounce bottle of beer from a female bartender. She was served the beer without question as to age. (N.T. 42)

10. Ms. C. was away from the licensed premises on that date and time. The bartender went to a convenience store for a few minutes leaving one of her friends in charge. The bartender's friend temporarily took charge and served the minor. Licensee dismissed the bartender. (N.T. 43-44)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged, as consolidated Under Citation No. 07-1723.

PRIOR RECORD:

Licensee has been licensed since June 7, 2006, and has had no prior violations.

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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

In consideration of the length of the investigation and that the Bureau did visit the premises on three occasions where no violations occurred, I impose:

Count No. 1 - \$200.00 fine.
Count No. 2 - \$1,250.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,450.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 25th day of March, 2008.

Felix Thau, A.L.J.

pm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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. 07-1723 and 07-2027C, As Consolidated.