

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2127
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-350318
	:	
BERNIE’S INC	:	
2 WILLOW ST	:	LID-48097
OIL CITY PA 16301-2229	:	
	:	
	:	
VENANGO COUNTY	:	
LICENSE NO. R-AP-13068	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:	For Licensee:
Nadia L. Vargo, Esquire	Ex Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 19, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Bernie’s Inc., License Number R-AP-13068 (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 March 18, April 24 and July 3, 2007, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of your licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The investigation which gave rise to the citation began on March 16, 2007 and was completed on August 15, 2007. The notice of violation letter was mailed to Licensee on August 23, 2007.

An evidentiary hearing was held on this matter on January 30, 2008, in Erie, Pennsylvania.
BERNIE'S, INC.
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Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Venango County, Pennsylvania and holds Restaurant Liquor License Number R-AP-13068. (N.T. 4)
2. On Sunday, March 18, 2007, at 12:35 a.m., an enforcement officer arrived in the area of the licensed premises and heard amplified music emanating from within the establishment. (N.T. 8)
3. The officer paced off distances up to 100 feet away from the licensed premises and heard Licensee's amplified music. (N.T. 9)
4. The officer observed that Licensee's speaker was approximately 2-1/2 feet tall by approximately 10 inches deep and sat on a tripod approximately three feet in the air. (N.T. 9,10)
5. On Tuesday, April 24, 2007, at approximately 6:45 p.m., an enforcement officer returned to the area of the licensed premises and heard loud music emanating from the establishment. (N.T. 12)
6. The officer paced off distances up to 100 feet away from the licensed premises and heard Licensee's amplified music. (N.T. 12)
7. The officer entered the premises and found entertainment being provided by a jukebox which was electronically amplified. (N.T. 13)
8. On Tuesday, July 3, 2007, at approximately 8:35 p.m., the enforcement officer returned to the area of the licensed premises and heard loud music emanating from the establishment. (N.T. 12)
9. The officer paced off distances up to 75 feet away from the licensed premises and heard Licensee's amplified music. (N.T. 14)
10. The officer entered the premises and found entertainment being provided by a jukebox which was electronically amplified. (N.T. 14)
10. The area surrounding the licensed premises is approximately 60% residential and 40% commercial, with ten homes nearby. (N.T. 12,15)

CONCLUSION OF LAW:

Sustained as charged.

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DISCUSSION:

At the hearing held on the matter, two enforcement officers testified in detail as to their visits to the licensed premises and hearing Licensee's amplified music emanating from inside at distances up to 75 feet and 100 feet away.

Licensee did not appear at the hearing although duly notified of the place and time thereof.

I find the testimony of the officers to be credible. As such, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since August 1, 2001, and has one (1) prior violation, to wit:

Citation No. 05-0099. Revocation without bond forfeiture.

1. Aided, abetted or engaged in the traffic in or sale of a controlled substance on the licensed premises.

April 5, 2004.

2. Possessed a controlled substance on the licensed premises.

April 5, 2004.

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.

I take administrative notice that the license expired on July 31, 2005, and was revoked under Citation No. 05-0099.

Counsel for the Bureau requested that the license be revoked.

After due consideration of the circumstances giving rise to the citation and the Licensee's citation history, revocation of license is imposed as the penalty in this case.

ORDER:

THEREFORE, IT IS HEREBY ORDERED that License Number R-AP-13068 issued to Bernie's, Inc., be REVOKED effective at 7:00 a.m. on Monday, April 28, 2008. Any Wholesale Liquor Purchase Permit Card or discount card issued in connection with the aforementioned license is CANCELLED.

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Since the license is inactive, there is no license to return; therefore, the Bureau of Licensing is hereby directed to mark their records that this license has been REVOKED. Licensee's right to renew this license is hereby CANCELLED.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 14th day of March, 2008.

Robert F. Skwaryk, J. ab