

Mailing Date: August 20, 2008

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 07-2590
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
	:	
v.	:	
	:	
MATTIS FAMILY, INC.	:	License No. R-13766
t/a The Country Inn Bar & Grill	:	
615 Ragers Hill Road	:	
South Fork, PA 15956-9801	:	

Counsel for Licensee: Myron I. Markovitz, Esquire
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Johnstown, PA 15901

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313 Mount Nebo Road
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OPINION

Mattis Family, Inc. t/a The Country Inn Bar & Grill (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ sustained the citation against Licensee and

imposed a two thousand dollar (\$2,000.00) fine, a two (2)-day license suspension, and a seven (7)-day amusement permit suspension.

The citation contained two (2) counts. The first count charged Licensee with violations of section 5.32(a) of the Pennsylvania Liquor Control Board's ("Board") Regulations [40 Pa. Code § 5.32(a)], in that 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, on February 23, March 10, 29, April 7, 19, 21, 28, May 5, 28, June 21 and 22, 2007. The ALJ sustained the first count only as to April 21, April 28 and June 22, 2007. (Admin. Notice). The charges in the first count relative to alleged violations on February 23, March 10, 29, April 7, 19, May 5, 28 and June 21 were dismissed. (Admin. Notice).

The second count charged Licensee with violations of section 471 of the Liquor Code [47 P.S. § 4-471], in that Licensee's licensed establishment was operated in a noisy and/or disorderly manner, on February 23, March 10, 24, 29, April 7, 19, 20, 21, 26, 28, May 3, 5, and 28, 2007. The ALJ sustained the second count only as to February 23, March 20 [sic March

10], 29, April 7, 19, 20, 21, May 3 and 5, 2007. (Admin. Notice). The charges in the second count relative to alleged violations on March 24, April 26, 28, and May 28, 2007 were dismissed. (Admin. Notice).

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. “Substantial evidence” has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Johnson v. Pennsylvania Bd. of Probation and Parole, 706 A.2d 903 (Pa. Cmwlth. 1998); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, Licensee contends that there was not substantial evidence to support the ALJ’s findings of violations relative to the second count of the citation as to February 23, March 20 [sic March 10], 29, April 7, 19, 20, 21, May 3 and 5, 2007, since the evidence did not support that the public welfare, peace and morals of the community were disturbed.

The record revealed that, on April 21, 2007, Pennsylvania State

Police, Bureau of Liquor Control Enforcement (“Bureau”) Officers Earl Killion and Christopher Burns entered the licensed premises on April 21, 2007, at approximately 9:50 p.m., and observed a band performing. (N.T. 69-70, 81-82). The officers could hear amplified music outside at fifty (50) feet from the establishment. (N.T. 70, 82). The officers asked Licensee to bring the noise level down so that music could not be heard outside of the licensed premises. (N.T. 70-71, 82).

On May 5, 2007, Officers Killion and Burns heard amplified music coming from the licensed premises at thirty (30) feet away. (N.T. 71-72, 83). The officers entered the premises and observed a jukebox playing music. (N.T. 72, 83).

Robert McDermott resides at 596 Ragers Hill Road, approximately five hundred (500) to six hundred (600) feet from the licensed premises. (N.T. 99). From February to June of 2007, Mr. McDermott kept a contemporaneous log of disturbances relative to the licensed establishment. (N.T. 100, 106-107; Ex. C-3).

On February 23, 2007, Mr. McDermott and his wife could hear music emanating from the licensed premises as they stood in their driveway at

approximately 9:40 p.m. (N.T. 108-109). On March 10, 2007, Mr. McDermott could hear bass coming from either the licensed premises or its parking lot. (N.T. 109-110). On March 29, 2007, at approximately 7:15 p.m., Mr. McDermott could hear bass coming from cars parking in the parking lot of the licensed premises. (N.T. 111).

On April 19, 2007, Mr. McDermott could hear traffic entering and exiting the licensed premises at high rates of speed. (N.T. 111). Because of the licensed premises, Mr. McDermott and his wife were forced to move their bedroom from the front of the house to the rear of the house. (N.T. 119, 121-122, 132-133).

Sharon McDermott explained that the traffic flowing to and from the licensed premises created more problems than the music that could be heard emanating from the premises. (N.T. 130-131).

Mark Younkens resides at 204 Country Inn Road, approximately two hundred twenty-three (223) feet from the licensed premises. (N.T. 134). Mr. Younkens also kept a contemporaneous log of disturbances relative to the licensed establishment. (N.T. 135-137; Ex. C-4).

On April 7, 2007, Mr. Younkens could hear music emanating from the

licensed premises while he stood outside of his residence at approximately 8:11 p.m. and again at approximately 11:20 p.m. (N.T. 138-139). He contacted the police, but the music continued. (N.T. 139).

On April 19, 2007, Mr. Younkens could hear music emanating from the licensed premises at approximately 9:25 p.m. (N.T. 141). At approximately 10:30 p.m., Mr. Younkens called the police. (N.T. 141). Officers arrived and patrons began to exit the licensed premises. (N.T. 141). As they exited the licensed premises, patrons were yelling and swearing at Mr. Younkens' house. (N.T. 141). At approximately 3:10 a.m., a patron exited the licensed premises and revved his truck in the parking lot, waking up Mr. Younkens. (N.T. 141-142).

On April 20, 2007, Mr. Younkens could hear music emanating from the licensed premises. (N.T. 144). On April 21, 2007, Mr. Younkens was sitting on his front porch at approximately 8:15 p.m. and could hear loud music and patrons revving engines on the licensed premises. (N.T. 145). Patrons of Licensee have made inappropriate remarks to Mr. Younkens' twelve (12)-year-old daughter and urinated outside on the licensed premises. (N.T. 148-150).

Barbara Younkins also made entries on her husband's log of disturbances. (N.T. 156; Ex. C-4). On April 7, 2007, Ms. Younkins could hear music emanating from the licensed premises at approximately 8:00 p.m. (N.T. 161). At approximately 3:00 a.m., Ms. Younkins and her family were awakened by patrons exiting the licensed premises, yelling and starting their cars. (N.T. 161).

On May 3, 2007, one (1) patron exited the licensed premises and engaged in an argument with a woman sitting in a van parked in Licensee's parking lot. (N.T. 165). The couple yelled at each other, then he threw a beer bottle against the building and went back inside of the establishment. (N.T. 165).

On May 5, 2007, Ms. Younkins could hear music emanating from the licensed premises. (N.T. 166). She observed several male patrons urinate in Licensee's parking lot. (N.T. 166).

On appeal, Licensee has the burden to prove that the decision of the ALJ was not based on substantial evidence. Kirkwood v. Com., Unemployment Compensation Bd. of Review, 106 Pa. Cmwlth. 92, 525 A.2d 841, (1987); Estate of McGovern v. Com., State Employees'

Retirement Bd., 517 A.2d 523 (Pa. 1986).

It is well-established that violations of laws, other than those contained in the Liquor Code, may constitute “sufficient cause” within the meaning of section 471 of the Liquor Code, if the licensee knew or should have known of the misconduct and failed to take affirmative measures to prevent the misconduct. Pa. Liquor Control Bd. v. T.L.K., Enterprises, 566 A.2d 1288 (Pa. Cmwlth. 1989).

In Appeal of Ciro’s Lounge, Inc., 358 A.2d 141 at 142 (Pa. Cmwlth. 1976), citing Petty Liquor License Case, 258 A.2d 874 (1969), the Commonwealth Court reiterated that operating the licensed establishment in a “noisy and disorderly manner” was “one of the conditions which constitute ‘other sufficient cause’” under section 471 for which a licensee may be penalized. Moreover, the Commonwealth Court held in Ciro’s that multiple occasions of noise and/or disorder are sufficient to uphold a charge of operating in a noisy and disorderly manner under section 471. [Id. at 143]. The charge of noisy and disorderly operations is a distinct and separate offense than the offense found in section 5.32(a), because it is based upon a pattern of practice of Licensee disturbing the peaceful enjoyment of the

surrounding community.

Licensee contends that there was not substantial evidence to support the ALJ's findings of violations relative to the second count of the citation as to February 23, March 20 [sic March 10], 29, April 7, 19, 20, 21, May 3 and 5, 2007, because the evidence did not support that the public welfare, peace and morals of the community were disturbed. While section 104 of the Liquor Code provides that its provisions shall be construed for the protection of the public welfare, health, peace and morals of the people of the Commonwealth [47 P.S. § 1-104], section 471 does not make as an element for finding a violation that public welfare, peace and morals of the neighbors be affected. Even if it were, however, the Bureau met its burden.

Officers Killion and Burns testified that on April 21 and May 5, 2007, amplified music could be heard emanating from the licensed premises. Four (4) residents of the neighborhood in which Licensee's establishment is located testified that, on February 23, March 10, 29, April 7, 19, 20, 21, May 3 and 5, 2007, they were disturbed by music and/or noise coming from Licensee's establishment. Three (3) of these residents kept contemporaneous, written documentation of each disturbance. Licensee

presented no evidence to refute these facts.

The unrefuted statements of neighbors were consistent in identifying Licensee's establishment as the source of the disturbances, which included loud music and other noise. The evidence of noisy and disorderly operations included a variety of issues, including intoxicated people screaming; reckless driving; car lights shining on neighbor's property; people urinating outside; and people breaking bottles.

Licensee's contention that there was no substantial evidence to support the ALJ's findings of violations is without merit. The ALJ did not commit an error of law or abuse his discretion in finding the violations set forth as to the second count of the citation. The Board, therefore, affirms the decision of the ALJ.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

Licensee must pay the fine in the amount of two thousand dollars (\$2,000.00) within twenty (20) days of the mailing date of this Order.

It is hereby ordered that Licensee's Restaurant Liquor License No. R-13766 be suspended for a period of two (2) days beginning on Monday, September 8, 2008 and ending at 7:00 a.m. on Wednesday, September 10, 2008.

Licensee is directed on Monday, September 8, 2008, at 7:00 a.m. to place a notice of suspension placard (Form No. PLCB-1925) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside the licensed premises, and to remove the liquor license from the wall and place it in a secure location. Licensee is authorized on Wednesday, September 10, 2008, at 7:00 a.m. to remove the placard of suspension and return its license to its original wall location.

Licensee is also directed to place the enclosed label over the Amusement Permit portion of the license on or before on Monday, Monday,

September 8, 2008, at 7:00 a.m. and, even after the license is returned to its original wall location, the label must be maintained over the Amusement permit portion of the license until Thursday, September 17, 2008 at 7:00 a.m., when Licensee is authorized to remove the label from its license.

Licensee must adhere to all conditions set forth in the ALJ's Order issued June 25, 2008.

Board Secretary