

Mailing Date: NOV 10 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0652
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-369666
v.	:	
	:	LID - 35008
SOPHIA'S TAVERN INC	:	
T/A SOPHIA'S TAVERN	:	
514 CHERRY STREET	:	
ERIE PA 16507-1138	:	
	:	
	:	
ERIE COUNTY	:	
LICENSE NO. R-AP-5879	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Michael Nickles, Esquire

For Licensee  
Donald Wagner, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on April 4, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Sophia's Tavern, Inc., t/a Sophia's Tavern, License Number R-AP-5879 (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 February 3, 2008, 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 October 1, 2008 , at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee was represented by Donald Wagner, Esquire.

The Bureau began its investigation of this matter on February 3, 2008, and completed its investigation on February 21, 2008. Thereafter, Licensee was notified of the nature of the violation(s) disclosed by the investigation by letter sent by certified mail on March 10, 2008. Counsel for Licensee stipulates that the notice provisions of Section 471 of the Liquor Code have been satisfied.

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. Shortly after midnight on February 3, 2008, Liquor Enforcement Officer Douglas E. Keys while on patrol in the area of Licensee's premises along with the city of Erie Nuisance Bar Task Force consisting of Lieutenant Kirk Werner, Officer Doug Byrne and Officer Jim Daniel received a call from police dispatch regarding a complaint of loud music emanating from Licensee's premises. (N.T. 7, 18-19, 22-23)

2. At 12:30 a.m., the detail of officers determined that the sound of amplified music was clearly audible at a distance of approximately 100 feet east of the premises. Upon further surveillance of the area, the officers also determined that the sound of this amplified music was clearly audible at distances of approximately 70 feet west and 100 feet south. (N.T. 7-8, 12-13, 23-24)

3. The officers arrived at Licensee's premises at 12:35 a.m., at which time Officer Keys remained in his vehicle while the remaining officers in the Nuisance Bar Task Force including Lieutenant Werner entered the premises. (N.T. 9, 25)

4. Upon entering, Lieutenant Werner determined that a female bartender was rendering service to various patrons and that prerecorded music was being broadcast through a juke box located on the premises. (N.T. 25)

5. Licensee's premises is located in a community which is predominantly residential. (N.T. 10, 25)

CONCLUSION OF LAW:

1. On February 3, 2008, 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."

In mitigation, the record discloses that this citation represents Licensee's first violation.

For the foregoing reasons, a penalty shall be imposed in the amount of \$300.00.

ORDER:

THEREFORE, it is hereby ordered that Sophia's Tavern, Inc., t/a Sophia's Tavern, License Number R-AP-5879, pay a fine of \$300.00 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 31<sup>st</sup> day of October, 2008.



Roderick Frisk, J.

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SOPHIA'S TAVERN, INC.  
Citation Number 08-0652

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

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Sophia's Tavern, Inc.