

Mailing Date: DEC 16 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1086
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-371453
v.	:	
	:	LID - 51706
7447 BCZ INC	:	
7447 TORRESDALE AVE	:	
PHILADELPHIA PA 19136-4115	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-5578	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.
For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 13, 2008. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on March 31 and April 19, 2008, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

At the hearing scheduled for October 21, 2008, Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the matter proceeded *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period March 20 through April 19, 2008, and sent written notice of the results of its investigation to the licensed premises by certified mail on April 28, 2008 (N.T. 8, Exhibit B-1).

2. A copy of this citation was mailed to Licensee by certified mail on May 13, 2008 (N.T. 8-9, Exhibit B-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified mail on September 5, 2008.

4. Liquor Enforcement Officer Justin Clark visited the licensed premises on March 31, 2008, and heard loud rap music emanating from it at a distance of forty feet. The officer entered the premises and found that the music he had heard outside was coming from loudspeakers inside. After leaving the premises, Officer Clark again heard the loudspeakers outside, as far away as 75 feet (N.T. 4-6).

5. On April 19, 2008, at about 12:35 a.m., Officer Suppin made the same observations at the premises as he did on March 31, except that the music was a bit louder (N.T. 6-7).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since August 27, 2003, and has had two prior violations:

Citation No. 07-1983. \$1,800.00 fine.

1. Loudspeakers could be heard outside. June 14, 2007.
2. Gambling (machine). June 14, 21 and July 3, 2007.
3. Sales to a minor. June 21, 2007.
4. Operated without a valid health permit. June 14, 21 and July 3, 2007.

Citation No. 07-2708. \$300.00 fine.

1. Fortified, adulterated and/or contaminated liquor. September 29, 2007.
2. Not a *bona fide* restaurant (insufficient food, cooking and eating utensils and kitchen facilities). September 29, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 7447 BCZ, Inc., License No. R-AP-SS-5578, shall pay a fine of three hundred dollars (\$300.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 8TH day of DECEMBER, 2008.



David L. Shenle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 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