

Mailing Date: JAN 9 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1608
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-375859
v.	:	
	:	LID - 18166
VIOLA G KENNEDY	:	
T/A VI'S BAR	:	
127 GRANT AVENUE	:	
VANDERGRIFT PA 15690-1229	:	
	:	
	:	
WESTMORELAND COUNTY	:	
LICENSE NO. R-AP-SS-EHF-16722	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Michael Nickles, Esquire

For Licensee  
No Appearance.

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on July 14, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Viola G. Kennedy, t/a Vi's Bar, License Number R-AP-SS-EHF-16722 (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 June 8 and June 21, 2008, Licensee, by her servants, agents or employees, used, or permitted to be used on the inside of her 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 December 9, 2008, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee did not appear personally or through legal counsel.

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. The Bureau commenced its investigation of Licensee's premises on June 8, 2008, and completed its investigation on June 21, 2008. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated June 25, 2008, which was sent by certified mail and received by Licensee on June 26, 2008. (Exhibit C-2)
3. The citation was issued on July 14, 2008, and was sent by certified mail and received by Licensee on July 16, 2008. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on October 22, 2008 by certified mail and first class mail.
5. The aforementioned certified mailing of the notice of hearing was signed for and received by Licensee on October 24, 2008.

June 8, 2008

6. On Sunday, June 8, 2008, while in the vicinity of Licensee's premises in an undercover capacity, Liquor Enforcement Officer B. K. Johnson heard the sound of music emanating from within Licensee's premises. (N.T. 6)

7. At 1:10 a.m., Officer Johnson entered Licensee's premises and observed a female bartender rendering service of alcoholic beverages to seven patrons. Upon entering, Officer Johnson further noted that a guitarist/vocalist and a drummer/vocalist were providing entertainment through an amplified sound system set up on the premises. (N.T. 6-7, 11)

8. At 1:20 a.m., Officer Johnson departed the premises through the front door and paced approximately 210 feet southeast of the premises along Grant Avenue where he continued to hear the sound of amplified vocals and instruments emanating from within Licensee's premises. (N.T. 7-10)

9. Officer Johnson then returned to Licensee's premises and continued his outside surveillance from Licensee's rear door and paced approximately 180 feet in a northerly direction along Farragut Avenue where he continued to hear the sound of amplified vocals and instruments emanating from within Licensee's premises. (N.T. 7-10)

10. Prior to departing the area, Officer Johnson reentered Licensee's premises to further examine the sound system used by the small band and determined that there were two amplified speakers approximately 2' x 3' and a base unit approximately 1' x 1'. (N.T. 8, 10)

11. Officer Johnson departed Licensee's premises at 1:45 a.m. (N.T. 9, 11)

June 21, 2008

12. On Saturday June 21, 2008 at 1:10 a.m., Officer B. K. Johnson arrived in the area of Licensee's premises and heard the sound of amplified music emanating from within the premises. (N.T. 12)

13. At this time, Officer Johnson commenced an outside surveillance and paced approximately 420 feet along Farragut Avenue at which point the sound of amplified vocals and instruments continued to be heard from within Licensee's premises. (N.T. 12-13)

14. Officer Johnson then continued his outside surveillance from the front of Licensee's premises along Grant Avenue where he paced approximately 150 feet at which point the sound of amplified vocals and instruments was heard. (N.T. 13)

15. Officer Johnson entered Licensee's premises in an undercover capacity at 1:25 a.m. and observed a female bartender rendering service of alcoholic beverages to eight patrons. Officer Johnson further verified that the source of the amplified music heard while outside was the direct result of a live three-piece band referred to as "DUI - Devils Under the Influence." Officer Johnson further noted that this music was amplified through a sound system set up on the premises. (N.T. 14)

16. Officer Johnson departed Licensee's premises at 2:05 a.m. with four patrons remaining. (N.T. 14)

17. Officer Johnson estimates that the area in front of Licensee's premises along Grant Avenue is predominantly commercial with several apartments located above businesses in the area where the music was heard on each visit. (N.T. 15)

18. Officer Johnson estimates that the makeup of the community in the rear of Licensee's premises along Farragut Avenue is predominantly residential with up to ten homes being affected with the amplified music during each visit. (N.T. 13-15)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On June 8 and 21, 2008, Licensee, by her servants, agents or employees, used, or permitted to be used on the inside of her 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 clearly established the violation as charged in this citation. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

PRIOR RECORD:

Licensee has been licensed since May 29, 1980, and has had five prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 04-0689. Fine \$800.00.

1. Illegal gambling (machines).  
June 27, 2003 and March 15, 2004.
2. Fortified, adulterated and/or  
contaminated liquor.  
March 15, 2004.

Citation No. 04-2231. Fine \$1,200.00.

1. Sales to a minor.  
October 21, 2004.

Citation No. 05-0683. Five days suspension.

1. Sales to a minor.  
March 10, 2005.

Citation No. 05-2833X. Fine \$150.00.

1. Issued worthless checks in payment for  
malt or brewed beverages.  
July 5, 2005.

Citation No. 06-2789X. Fine \$200.00. Fine not paid and license suspended for one day and thereafter until fine paid.

1. Issued worthless checks in payment for  
malt or brewed beverages.  
July 6, 2006.

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 addition to her failure to submit a pre-hearing memorandum, Licensee’s failure to appear at the administrative hearing held in this matter demonstrates a clear lack of interest in this liquor license.

For the foregoing reasons, a penalty shall be imposed in the amount of \$600.00.

ORDER:

THEREFORE, it is hereby ordered that Viola G. Kennedy, t/a Vi’s Bar, License Number R-AP-SS-EHF-16722, pay a fine of \$600.00 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 31st day of December, 2008.



Roderick Frisk, J.

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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.

VIOLA G. KENNEDY  
Citation Number 08-1608

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

Citation No. 08-1608  
Viola G. Kennedy