

Mailing Date: APR 13 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2103
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-376272
v.	:	
	:	LID - 14069
SCERNI INC	:	
1227 WALNUT STREET	:	
PHILADELPHIA PA 19107-4914	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-SS-9879	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.

For Licensee: Ralph Berarducci, president of Licensee

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 9, 2008. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on July 17, 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.

A hearing was held on February 11, 2009, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. The Bureau of Liquor Control Enforcement received one or more complaints from a person "about loud music at different locations" and assigned Liquor Enforcement Officer Kareem Davis to investigate (N.T. 5-6).

2. Officer Davis parked his vehicle on Walnut Street, on the other side of the street from the licensed premises, at about 8:00 p.m. on July 17, 2008. He could see directly into the licensed premises because the front of the building is all glass windows, which were open. He saw two men playing piano and saxophone (but not singing) inside the licensed premises, and he heard their music outside the premises at a distance of twenty feet (N.T. 7-10, 22).

3. Officer Davis was asked if he observed "any type of amplification device" and he answered "It was hooked up to like a sound system. It was like a speaker like right near where the piano and the saxophone player was." (N.T. 8-9).

4. When asked to specify particularly the source of the music he heard, whether it was from a loudspeaker or directly from an unamplified musical instrument, Officer Davis testified “I really couldn’t tell It could have been amplifying out from the speaker or it could have been just them playing it, like you say, because you can just play it without.” (N.T. 25).

CONCLUSIONS OF LAW:

The evidence presented was equivocal, and therefore insufficient to prove that Licensee violated §5.32(a) of the Liquor Control Board Regulations.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 08-2103 is DISMISSED.

Dated this 9th day of April, 2009.



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.