

Mailing Date: DEC 30 2009

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2299
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-371524
	:	
KENRICH ATHLETIC CLUB	:	
121 S. 19 TH ST.	:	LID - 1117
PHILADELPHIA PA 19103-4905	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1927	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

DONALD M. MOSER, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 14, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kenrich Athletic Club, License Number C-1927 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, May 27, 2009, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains three counts.

The first count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on April 6, 2008, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The second count charges Licensee with violation of Sections 406(a)(4) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(4) and 4-493(16), in that on April 6, 2008, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The third count charges Licensee with violation of Section 102 of the Liquor Code, 47 P. S. Section 1-102, in that on April 6, 2008, Licensee, by its servants, agents or employes, improperly admitted members.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. In conjunction with that investigation, she first visited the licensed premises on April 6, 2008 at approximately 1:45 a.m. At that time, she could hear music when she was standing on the corner right outside the premises. She looked around and noted that the front door was open. Four patrons were outside, as was the doorman. Behind her she could hear very loud music. She also noted that there was a window open approximately twenty feet from where she was located. She walked approximately thirty feet in each direction and then stopped as she heard music from another source (N.T. 7-9).

2. At approximately 1:55 a.m., the officer entered the premises and heard music which she heard outside the premises and was playing inside. She observed a woman behind the cash

register and a man who appeared to be a security guard. She noted that there were three or four patrons at the bar (N.T. 9-10).

3. At this time, the officer was accompanied by a second officer from the Bureau of Enforcement. They met on the corner outside the premises and proceeded to go into the premises together (N.T. 10).

4. A security officer asked the officers for their identification cards. The security officer swiped the cards on the machine. The officer questioned him as to why he needed the identification card and he handed them paper and directed them to fill out the application for membership (N.T. 10).

5. The officers filled out the application using false information (N.T. 10-11).

6. The officers filled the information out with the information contained on the identification card which she had with a different name, birth date and address (N.T. 11).

7. The officers were also requested to pay twenty dollars each for an entry fee (N.T. 11).

8. One officer asked where everyone was and they were directed to the second level (N.T. 12).

9. On the first floor, the officer observed a bar with three or four patrons. At approximately 2:05 a.m., the officers went upstairs. As they proceeded up the stairs, they heard music get louder and they could hear more people. As they approached the third level, they saw approximately sixty patrons, a disc jockey playing music and two bartenders rendering service of alcoholic beverages (N.T. 12-14).

10. The disc jockey's equipment consisted of two speakers on a tripod in front of larger speakers. The disc jockey was located in the right rear corner by the window (N.T. 14).

11. The officers approached the bar at 2:15 a.m. and sat at the corner of the bar. One officer ordered vodka and cranberry and the other officer ordered an alcoholic drink. They were charged approximately seven dollars for the drink (N.T. 14-15).

12. They were never questioned as to membership after they completed the initial application upon entering the premises. The officers never received a membership card (N.T. 15).

13. The officers ordered another drink during their stay at the premises (N.T. 15).

14. At approximately 2:30 a.m., the officers went to the second floor, which had pool tables on it and sat there (N.T. 15).

15. On the second floor, the officers observed a bartender. About 2:45 a.m., they ordered another drink. There were several patrons coming and going between the floors (N.T. 15-16).

16. At 3:05 a.m., the officers ordered another drink from the bartender on the second floor. There were two or three individuals in front of the officer ordering drinks when she arrived. The officer did not observe any clocks on the premises but did use her watch to determine that the time was 3:05 a.m. She and the other officer were both served alcoholic beverages (N.T. 17-18).

17. The officer went to the third floor at approximately 3:10 a.m. to see if service of alcoholic beverages was continuing. The officer left her drink on the second level and when she reached the third level, she ordered another vodka and cranberry from the third floor bartender at approximately 3:10 a.m. (N.T. 18-19).

18. At approximately 3:12 a.m., the bartender was still serving and the music was still being played by the disc jockey (N.T. 19).

19. The officer departed the premises at approximately 3:30 a.m. The disc jockey had stopped playing music at approximately 3:25 a.m. (N.T. 19-20).

20. When the officer left the premises, she did not leave the surrounding area. She noted that security was rushing the patrons out of the bar. The officer estimated that there was at least twenty patrons still on the third level as she was going down the steps (N.T. 20).

21. By 3:40 a.m., she drove by with the car and it appeared that everyone was out of the premises at that point (N.T. 20).

22. Christopher Twardy is the vice-president and secretary of the premises. He held this position on April 6, 2008. On the night of this incident, April 6, 2008, he was at the licensed premises. Mr. Twardy indicated that the dimensions of the premises on April 6, 2008 were the same as those set forth in the application for a person to person transfer of the license in a letter dated March 17, 2004. The documents indicate that the premises consists of a basement, which is the storage area and kitchen; a first floor with three serving areas, kitchen and storage; a second floor with two serving areas, storage and a kitchen, and a third floor with four serving areas. The fourth floor was designated as two storage areas (N.T. 53-56 and Exhibit L-3).

23. The Licensee does not believe that the third floor will hold a maximum capacity of forty patrons (N.T. 57).

24. The Licensee indicated that the third floor is an area where bottles could be purchased not individual drinks (N.T. 57 and Exhibits L-1 and L-2).

25. Mr. Twardy indicated that nonmembers are not served alcoholic beverages unless they are accompanied by a member (N.T. 72-73).

26. Mr. Twardy indicated that there is a written application and member status requires each member pay annual dues, which varies upon completion of the application. The applicant's background is verified by using the club's resources, including the club's computer database and its personnel. Sponsorship of new members is not required. The membership committee evaluates the applicant information and votes/admits/excludes each ballot at each monthly meeting (N.T. 75).

CONCLUSIONS OF LAW:

Count No. 1 - On April 6, 2008, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the 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, 40 Pa. Code Section 5.32(a).

Count No. 2 - On April 6, 2008, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(4) and 493(16) of the Liquor Code, 47 P.S. Sections 4-406(a)(4) and 4-493(16).

Count No. 3 - On April 6, 2008, Licensee, by its servants, agents or employes, improperly admitted members, in violation of Section 102 of the Liquor Code, 47 P. S. Section 1-102.

PRIOR RECORD:

Licensee has been licensed since August 17, 1960, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 07-1376. \$1,500.00 fine.

1. Sales to nonmembers.
February 17, March 7 and April 1, 2007.
2. Sales between 3:00 a.m. and 7:00 a.m. April 1, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. April 1, 2007.

4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
April 1, 2007.

Citation No. 07-3003. \$3,500.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
September 8, 2007.
2. Sales to nonmembers.
May 18 and September 8, 2007.
3. Sales between 3:00 a.m. and 7:00 a.m.
September 8, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
September 8, 2007.
5. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. September 8, 2007.
6. Sold an unlimited or indefinite amount of alcoholic beverages for a fixed price. May 18, 2007.
7. Improper admission of members.
May 18, 2007.

Citation No. 08-0930. \$1,000.00 fine and ten days suspension.

1. Used loudspeakers or devices whereby music could be heard outside. March 8, 2008.
2. Interfered with an Enforcement officer in the performance of his duties.
March 8, 2008.

DISCUSSION:

Much of the Licensee's defense was based upon an assertion that the officer was mistaken as to the layout of the premises and as to their operating procedure. The Court found the officer credible, though there were some discrepancies in terms of the layout of the premises. The officer related sufficient information to determine that there were in fact several violations on the night of April 6, 2008. The officer heard music outside the premises and at some distance from the premises. She indicated that she also heard music from another source. However, she did go inside this location to investigate the sounds of the music, which were coming from a disc jockey inside.

In addition, the officer was able to purchase alcoholic beverages after 3:00 a.m. on the premises. Finally, the officer was not properly admitted to the club before being permitted to purchase alcoholic beverages on the premises. There was no investigation and certainly no vote by the membership prior to the officer being admitted as a member.

In reviewing the prior record of Licensee, it is noted that there were a number of prior offenses, which include sales to nonmembers and after hours sales, as well as prior offenses for loudspeaker violations.

Under the circumstances, monetary penalties and a period of suspension shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count Nos. 1 and 3 of this case.

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 2 of this case.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$500.00 and one day suspension.
- Count No. 2 - \$2,000.00 and two days suspension. Count
- No. 3 - \$500.00 and two days suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kenrich Athletic Club, License Number C-1927, pay a fine of Three Thousand Dollars (\$3,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Kenrich Athletic Club
Citation No. 08-2299

IT IS FURTHER ORDERED that the Club Liquor License of Kenrich Athletic Club, License Number C-1927, be suspended for a period of five (5) days **BEGINNING** at 7:00 a.m. on Monday, March 29, 2010 and **ENDING** at 7:00 a.m. on Saturday, April 3, 2010.

Licensee is directed on Monday, March 29, 2010 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

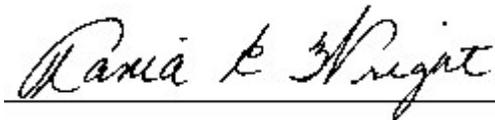
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Saturday, April 3, 2010 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 14TH day of December, 2009.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.

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Kenrich Athletic Club
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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Citation No. 08-2299
Kenrich Athletic Club