

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. 08-3062
LIQUOR CONTROL ENFORCEMENT	:	
	:	
	:	
v.	:	Incident No. W01-382660
	:	
	:	
KENRICH ATHLETIC CLUB	:	
121 S. 19 <sup>TH</sup> ST.	:	LID - 1117
PHILADELPHIA PA 19103-4905	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1927	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**DONALD M. MOSER, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 6, 2009, 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 two counts.

The first count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P. S. Section 4-406(a)(1), in that on November 8 and 22, 2008, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The second 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 November 8 and 22, 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.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. On November 8, 2008, an officer from the Bureau of Enforcement conducted an investigation of the licensed premises relative to a complaint from a neighbor. The officer arrived at approximately 1:50 a.m. and parked on South 19<sup>th</sup> Street, approximately eighty feet from the front entrance of the premises (N.T. 7-8).

2. When the officer exited his vehicle, he could hear music over the sound of the vehicle and pedestrian traffic. When the officer exited his vehicle, he proceeded to the premises. Outside the premises, there were two doormen. He attempted to enter the premises, however, the doormen asked him for identification. The officer showed them his Pennsylvania driver's license. The doormen frisked him and allowed him to enter the premises. Inside the premises, there was a male standing next to the cash register, who told the officer that there was a five dollar cover charge. The officer paid the five dollars. The officer observed a bar with a bartender and four patrons behind him (N.T. 8-9).

3. No questions were asked of the officer regarding membership during the course of his visit to the premises. The officer, at the time of the hearing or prior to the hearing, was never a member of the licensed club (N.T. 9).

4. The officer proceeded to the bar and requested a twelve ounce bottle of Miller Lite beer. He was charged five dollars for this purchase (N.T. 9).

5. After the officer purchased the beer, he proceeded up a flight of steps to the second floor of the premises where he noted another bar area. In this bar area, there was a male disc jockey. The disc jockey was playing music over approximately eighteen by thirty-six inch speakers. The officer noted that this was the same type of music that he had heard outside the premises (N.T. 10).

6. The officer noted that there was a dance floor and a bar on the second floor area. Behind the bar, there were three male bartenders. The officer noted there were approximately seventy patrons on the second floor. At approximately 2:35 a.m., the officer purchased another twelve ounce bottle of Miller Lite beer for five dollars (N.T. 10).

7. At approximately 3:10 a.m., the music and dancing stopped (N.T. 11).

8. On Saturday, November 22, 2008, the officer arrived at the premises at approximately 2:05 a.m. On this occasion, he parked his vehicle on South 19<sup>th</sup> Street, approximately fifty feet away from the entrance to the premises. When the officer exited the premises, he could hear music emanating from the licensed premises over the sound of the vehicle and street pedestrian traffic (N.T. 11).

9. The officer later determined that the source of the music was a disc jockey who was playing music through three eighteen by thirty-six inch loudspeakers (N.T. 12-13).

10. When the officer initially walked into the premises, he noted a doorman who asked him for identification. Again, he showed the doorman his Pennsylvania driver's license which the doorman looked at and returned to him. The officer was frisked and directed to another person who was standing by a cash register. The individual told him that there was a ten dollar cover charge. He paid the ten dollar cover charge, which he put into an electronic cash register. There was a bar behind her, with a bartender and approximately fifteen patrons. The officer went immediately to the second floor (N.T. 12).

11. On the second floor, the officer saw the disc jockey playing music. He approached the bar, which had three bartenders, and ordered a twelve ounce bottle of Miller Lite Beer from the bartender and was charged five dollars. The officer was not challenged as to membership (N.T. 13).

12. Entertainment continued until approximately 3:00 a.m. At 2:40 a.m., the officer did purchase a Miller Lite beer for which he paid five dollars (N.T. 13-14).

13. Francis Twardy, the president and steward of the licensed premises, has worked in that capacity since March of 2007. When he took over the club, he requested and received a membership list. The list was on hard copy and on a system called an IB Tech, which was a laptop with a card swiping machine (N.T. 18-19).

14. In June and July of 2007, Mr. Twardy indicated that they had the system streamlined, but that initially it was ineffective (N.T. 19-20).

15. Mr. Twardy testified that in August of 2008, the system was stolen (N.T. 20).

16. Mr. Twardy indicated that when they swiped the identification cards, the machine verified individuals who were approved as members (N.T. 21).

17. The club bought an intricate machine in December of 2008. Mr. Twardy states that it communicates with the computer in the office (N.T. 22).

18. The machine accepts a driver's license and that information is stored electronically (N.T. 22).

19. Mr. Twardy indicated that in order to become a member, you must complete an application and a driver's license must be scanned. Then, a vote is taken at the board meeting (N.T. 23-4).

20. The next time the individual enters the premises, their identification is scanned and the doorperson will be informed by the machine if that person is in fact a member (N.T. 24).

21. Mr. Twardy indicated that he had invested in soundproofing, however, it was difficult because the building is over 200 years old (N.T. 24-25).

22. Mr. Twardy indicated that he began making provisions to reduce the noise when the Licensee had first moved into the building (N.T. 26).

23. On the day of the officer's visit, Licensee indicated that their system had been stolen and was unavailable (N.T. 28-29).

#### CONCLUSIONS OF LAW:

Count No. 1 - On November 8 and 22, 2008, Licensee, by its servants, agents or employes, improperly admitted members, in violation of Section 406(a)(1) of the Liquor Code, 47 P. S. Section 4-406(a)(1).

Count No. 2 - On November 8 and 22, 2008, Licensee, by its servants, agents or employees, 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).

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:

Licensee has a recurring problem with regard to the proper admission of its members and otherwise allowing sales to nonmembers. Licensee has described a very elaborate procedure for admission of members and use of high tech equipment for scanning driver's licenses and determining membership. If that equipment again should be stolen or fail, Licensee should be prepared to ask for membership cards or maintain a membership list at the door or use some other method to determine membership before allowing sales. Licensee is not operating within the boundaries of the club license, but instead appears to be allowing anyone to come in off the street who pays a cover charge.

With regard to the sound of music or other entertainment that could be heard on the outside of the premises, the Licensee has indicated that they are taking steps to soundproof the premises. It would behoove Licensee to do so in that they have a long and sordid record of violations and offenses. In addition, this complaint came from a neighbor. Neighbors have a right to not be disturbed and to enjoy a peaceful, quiet environment.

Under the circumstances, monetary penalties 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 this case.

Therefore, penalties shall be assessed as follows:

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Count No. 1 - \$1,000.00.  
Count No. 2 - \$750.00.

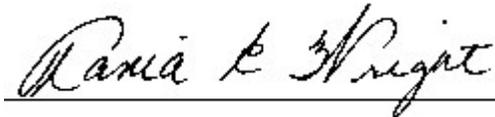
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kenrich Athletic Club, License Number C-1927, pay a fine of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) 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.

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

Dated this 14<sup>TH</sup> 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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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, along with any required documentation, to:

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

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