

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

PENNSYLVANIA STATE	:
POLICE, BUREAU OF	: Citation No. 09-0195
LIQUOR CONTROL ENFORCEMENT	:
	: Incident No. W09-385706
v.	:
	: LID - 59581
BONNIE L WEIL	:
T/A THE WAGON WHEEL	:
17-19 E MAIN ST	:
RINGTOWN PA 17967	:
	:
SCHUYLKILL COUNTY	:
LICENSE NO. R-AP-SS-16462	:

JUDGE SHENKLE
 BLCE COUNSEL: Roy Harkavy, Esq.
 LICENSEE COUNSEL: Stephen P. Ellwood, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 6, 2009. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on December 20, 2008 and January 2, 2009, 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 September 18, 2009, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On December 20, 2008, a liquor enforcement officer arrived at the licensed premises at 7:00 p.m. There were five patrons attended by one bartender. There was a juke box connected to two loudspeakers mounted near the ceiling above a dance floor. When the officer left at 7:30 p.m. he continued to hear music outside, as far away as 100 feet (N.T. 6-8).

2. On January 2, 2009, the same officer was inside the premises at 7:05 p.m. when a customer made selections on the jukebox. Music played through the same speakers observed in the first visit. Outside, the officer again heard music from the loudspeakers inside (N.T. 9-11).

CONCLUSIONS OF LAW:

Sustained as charged.
Bonnie L. Weil t/a The Wagon Wheel
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PRIOR RECORD:

Licensee has been licensed since April 9, 2008, and has had prior violations as follows:

Citation No. 08-1601. \$350.00 fine.

1. Loudspeakers. June 4 and 14, 2008.

Citation No. 08-2795. \$600.00 fine.

1. Loudspeakers. July 12, 2008.

DISCUSSION:

Licensee's counsel pointed out that the officer did not mention hearing the music before entering the premises on December 20, 2008. He was not asked this precise question, however, so I did not lose confidence in the evidence because of the omission.

Licensee needs to do something to contain the sound, such as install a vestibule and heavy drapes on the windows. She testified that she checks outside and does not hear the loudspeakers herself. Licensee's testimony concerning use of the "clicker" to control sound level was baffling. With all due respect, I must remind Licensee that not everyone has the same ability to hear sound. Perhaps a second opinion would be in order. This is too many violations of this type in a short time.

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 this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bonnie L. Weil, t/a The Wagon Wheel, License No. R-AP-SS-16462, shall pay a fine of six hundred fifty dollars (\$650.00) 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 ____18TH____ day of ____November____, 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.

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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 to:

PLCB-Office of Administrative Law Judge

Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

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Bonnie L. Weil