

Mailing Date: DEC 21 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0231
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-385962
	:	
VESUVIO RESTAURANT & BAR INC.	:	
736-738 S. 8 <sup>TH</sup> ST.	:	LID - 46689
PHILADELPHIA PA 19147-2839	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-11131	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EDWARD TARASKUS, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 10, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Vesuvio Restaurant & Bar, Inc., License Number R-AP-SS-11131 (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 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 December 18, 2008 and January 15, 2009, 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.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement arrived at the licensed premises at 9:15 p.m. on December 18, 2008. He parked the car about 120 feet on South 8<sup>th</sup> Street. When he exited the vehicle, he could hear bass tones and music which he believed to be emanating from the vicinity of the bar. Outside the bar, he walked to the northwest corner to a park about fifty feet away from the bar. He could still hear music coming from the bar. From the outside of the premises, through a big glass window, he could hear a disc jockey whose back was facing. The speakers were facing into the building (N.T. 5-6).

2. The officer heard what he believed to be reggae music outside the bar (N.T. 7).

3. The officer entered the premises at approximately 10:00 p.m. where he observed twenty-five patrons on the first floor, along with a male bartender (N.T. 7).

4. On the second floor, he observed a disc jockey. He noted two big speakers mounted on tarp on either side of a table. The disc jockey was behind the table (N.T. 7).

5. He determined that the music inside the premises was the same as that which he had heard outside (N.T. 8).

6. The officer observed sales of alcohol and purchased two Rolling Rock beers and two Miller Lite beers (N.T. 8).

7. The officer remained inside the premises for approximately a half an hour. When he departed, he walked approximately twenty feet with his vehicle and heard music coming from the premises as he departed (N.T. 8-9).

8. On January 15, 2009 at 10:00 p.m., the officer again visited the licensed premises. He parked a block or two away from the premises. When he was approximately fifty feet from South 8<sup>th</sup> Street, he heard music which he believed to be emanating from the licensed premises. He again saw the disc jockey on the second floor. The premises was open and operating. He noted that there were two patrons on the first floor and a bartender on duty. He went to the second floor and observed a disc jockey and speakers. The officer noted that there were individuals shooting pool. He saw two speakers on the table where the disc jockey had his equipment (N.T. 9-10).

9. The officer purchased either a Miller Lite beer or a Rolling Rock beer on the first floor of the premises (N.T. 11).

10. When the officer departed, he could still hear music when he exited and walked towards his vehicle up to a distance of fifty feet (N.T. 11).

11. Gerard D'Addesi is a stockholder of the licensed premises. He stated that he does not allow music on the outside of the premises and that there was a noise policy in place in December, 2008 and January, 2009 (N.T. 15-17).

12. Mr. D'Addesi indicated that he had taken steps to prevent music from being heard outside. The staff is required to go outside and monitor the building. He also indicated that they have people to police the outside of the building where people go to smoke (N.T. 18-19).

13. Mr. D'Addesi indicated that the windows are sealed on the second floor so that they cannot be opened. The balcony areas are soundproofed (N.T. 19-20).

14. Mr. D'Addesi recalls not hearing any music outside the premises on December 18, 2008 or January 15, 2009 (N.T. 20).

15. Ryan Slepian is employed as bar manager and was so employed in December of 2008 and January of 2009. He reiterated the policy with regard to noise emanating from the licensed premises and he indicated that it is the policy of being heard on the outside of the premises. He indicates that he monitors the music (N.T. 21-22).

CONCLUSIONS OF LAW:

On December 18, 2008 and January 15, 2009, 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).

PRIOR RECORD:

Licensee has been licensed since September 12, 2000, and has a record of prior violations as follows:

Citation No. 06-1010C. \$1,250.00 fine and R.A.M.P. training mandated.

1. Sales to a minor.  
March 22, 2006.

DISCUSSION:

The witnesses presented, on behalf of the Licensee, seemed to have integrity and to be making efforts to curtail the music. The officer was also found to be credible and the Court believes that he in fact heard the music emanating from the licensed premises at distances of one hundred and twenty feet away from the premises.

Under the circumstances, a monetary penalty shall be imposed. The Licensee is warned to take steps to continue to prevent music being played inside of the premises from escaping to the outside of the premises.

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.

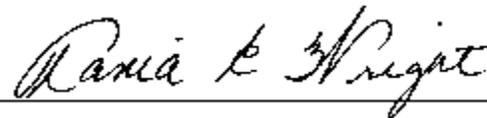
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Vesuvio Restaurant & Bar, Inc., License Number R-AP-SS-11131, pay a fine of Two Hundred Fifty Dollars (\$250.00) 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 8<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.

mm

Vesuvio Restaurant & Bar, Inc.  
Citation No. 09-0231

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. 09-0231  
Vesuvio Restaurant & Bar, Inc.