

Mailing Date: AUG 25 2009

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : Citation No. 09-0543  
LIQUOR CONTROL ENFORCEMENT :  
 : Incident No. W01-384874  
 :  
 v. :  
 : LID - 48666  
 :  
 6547 INC :  
 6547 ELMWOOD AVE :  
 PHILADELPHIA PA 19142-2816 :  
 :  
 PHILADELPHIA COUNTY :  
 LICENSE NO. R-AP-SS-OPS-1562 :

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 10, 2009. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on February 14, 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 July 1, 2009, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

**FINDINGS OF FACT:**

1. A liquor enforcement officer investigated Licensee, beginning in November, 2008, and making seven or eight visits to the premises before concluding the investigation in February, 2009. Only one violation of law was observed, based on the visit of February 14, 2009 (N.T. 5-6).

2. On February 14, 2009, the officer arrived at Licensee's establishment at about 11:00 p.m. As she approached the front of the premises, the officer heard loud music emanating from a rear door. She entered and found that the source of the music was a disk jockey using two large loudspeakers. Outside of the premises the music could be heard at a distance of 15 paces (N.T. 7-8).

3. The date for which the officer issued this citation was Valentine's Day. The disk jockey played old school R & B and a little blues – music which doesn't require a lot of volume. The crowd consisted of people in their 40's and older. Licensee makes an effort to keep loudspeaker music from emanating from the premises (N.T. 15-20).

CONCLUSIONS OF LAW:

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on February 14, 2009, by permitting the use on the inside of the licensed premises of a loudspeaker, whereby the sound of music could be heard outside.

PRIOR RECORD:

Licensee has been licensed since November 21, 2001, and has had one prior violation:

Citation No. 05-1330. \$300.00 fine.

1. Loudspeakers could be heard outside. May 7, 20, 21 and 22, 2005.

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. The previous violation involved three separate incidents, and the distance involved in this case (about 30 feet) persuades me that a lesser penalty is warranted.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 6547, Inc., License No. R-AP-SS-OPS-1562, shall pay a fine of two hundred dollars (\$200.00) 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 11<sup>TH</sup> day of AUGUST, 2009.



David L. Shenkle, 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.**

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 to:

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