

Mailing Date: SEP 29 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0947
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-389871
v.	:	
	:	LID - 56405
BELLA NOCHE INC	:	
2100 ST VINCENT ST	:	
PHILADELPHIA PA 19149-1333	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-EHF-8515	:	

JUDGE SHENKLE  
BLCE COUNSEL: Erik Shmukler, Esq.  
LICENSEE: no appearance.

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 28, 2009. There are four counts in the citation.

The first count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on February 26, March 7 and 11, 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.

The second count alleges that Licensee violated §§104(c), 401(a) and 406(a)(1) of the Liquor Code, 47 P.S. §§1-104(c), 4-401(a) and 4-406(a)(1), on February 26, 2009, by offering and/or giving liquor and/or malt or brewed beverages as a prize.

The third count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on February 26, 2009, by permitting patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fourth count alleges that Licensee violated §§406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on February 26, 2009, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

At the hearing scheduled for July 29, 2009, in Plymouth Meeting, Pennsylvania, there was no appearance by for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period February 21 through April 1, 2009, and sent written notice of the results of its investigation to the licensed premises by certified mail on April 13, 2009 (N.T. 13-14, Exhibit B-1).

2. A copy of the citation was mailed to Licensee on April 28, 2009 (N.T. 14, Ex. B-2).

3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on June 10, 2009.

4. On February 26, 2009, a liquor enforcement officer heard music emanating from the licensed premises at 12:50 a.m., as far as 200 feet away from it. She entered the premises and found that the music was coming from loudspeakers being used by a disk jockey (N.T. 5-6).

5. The disk jockey conducted a drawing and announced a winning number. A woman went to the disk jockey with her ticket and claimed the prize, a bottle of white wine (N. T. 7).

6. At 2:16 a.m. a bartender served himself a bottle of beer. A woman then purchased a six pack of beer and a bartender charged her eight dollars, which he put in his pocket. At 2:26 a.m. one of the bartenders served a bottle of beer to a man for no charge. At 2:27 a.m. a bartender served a mixed drink containing Kahlua liqueur. At 2:30 a.m. a bartender locked the front door and the disk jockey stopped playing music. There were still 15 patrons present. At 2:37 a.m. a bartender served mixed drinks with vodka to two women. At 2:38 a.m. a bartender served himself a bottle of beer. At 2:46 a.m. one of the bartenders served a bottle of beer to a man. When the officer left at 3:15 a.m. there were still five patrons in the premises (N.T. 7-9).

7. On March 6, 2009, a liquor enforcement officer entered the premises at 11:55 p.m. Several loudspeakers were being used by a disk jockey to play music. When the officer left the premises at 1:15 a.m. on March 7, she continued to hear music from the loudspeakers as far as 320 feet away from the premises (N.T. 10-11).

8. On March 11, 2009, the officer entered the premises at 11:00 p.m. A disk jockey was hosting karaoke, using two loudspeakers. When the officer left at 11:50 p.m. she continued to hear the loudspeakers outside, at a distance of 175 feet (N.T. 11-12).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since June 27, 2006, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count Nos. 1, 2 and 3 any fine must be in the \$50.00 to \$1,000.00

range. For violations of the type found in Count No. 4 any fine must be in the \$1,000.00 to \$5,000.00 range. Penalties are assessed as follows:

- Count No. 1 – a fine of \$400.00.
- Count No. 2 – a fine of \$300.00.
- Count No. 3 – a fine of \$300.00.
- Count No. 4 – a fine of \$1,000.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bella Noche, Inc., License No. R-AP-SS-OPS-EHF-8515, shall pay a fine of two thousand dollars (\$2,000.00) 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 21<sup>ST</sup> day of September, 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 cashier's check, certified check or money order. Personal and business checks are not acceptable unless bank certified. 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

Citation No. 09-0947  
Bella Noche