

Mailing Date: NOV 20 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1434
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-382949
v.	:	
	:	LID - 37953
MM & KM INC	:	
T/A STEPPIN OUT LOUNGE	:	
1956 BUFFALO ROAD	:	
ERIE PA 16510-1264	:	
	:	
	:	
ERIE COUNTY	:	
LICENSE NO. R-AP-2759	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** EMILY GUSTAVE  
**LICENSEE COUNSEL:** PRO SE

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on June 15, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against MM & KM, Inc., t/a Steppin Out Lounge, License Number R-AP-2759 (hereinafter Licensee).

The citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471], in that on June 22 and August 3, 2008, Licensee's establishment was operated in a noisy and/or disorderly manner.

Administrative hearings were conducted on October 28, 2009 and October 29, 2009, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Emily Gustave, Esquire. Licensee's sole Corporate Officer Mary Morgan appeared on behalf of Licensee.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on October 15, 2008, and completed its investigation on June 1, 2009. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated June 4, 2009, which was sent by certified mail and received by Licensee on June 6, 2009. (Exhibit C-1)
3. The citation was issued on June 15, 2009, and was sent by certified mail and received by Licensee on July 2, 2009. (Exhibit C-2)

COUNT 1  
June 22, 2008

4. On June 22, 2008 shortly after midnight, police officers from the City of Erie Police Department were dispatched to Licensee's premises in response to a report of shots fired. (N.T. 69, 76)
5. Upon their arrival at the premises, the officers noted that numerous patrons were quickly departing the premises. (N.T. 69, 76)
6. Upon their entry, the officers observed two of the patrons with blood on their tuxedos along with broken glass and bottles scattered throughout the premises. (N.T. 72)
7. During the course of this investigation, the officers were unable to ascertain any details regarding this incident from either Licensee's employees or other patrons. The officers found a single .40 spent shell casing on the floor of the bar. (N.T. 70-73, 76-77)
8. Licensee's sole Corporate Officer and Shareholder Mary L. Morgan testified that members of a bridal party entered her premises on the evening in question. A short time later, an argument and altercation abruptly broke out at which time she and a fellow employee cleared the bar of bottles and glasses and sought protection behind the bar. Ms. Morgan further testified that she did not hear any shots fired on the premises. (N.T. 83-85)

9. Mr. Edward L. Morgan, Ms. Morgan's nephew who was employed by her as a disc jockey and janitor at the premises immediately stopped the music and unsuccessfully attempted to curtail the outbreak. Mr. Morgan further testified that he heard no shots fired on the premises. (N.T. 87-89)

10. There were no reports relating to this incident from any of the area hospitals relative to individuals having been treated for gunshot wounds. (N.T. 74)

August 3, 2008

11. On August 3, 2008 at 1:16 a.m., officers with the Erie Police Department were dispatched to Licensee's premises on reports of shots fired. (N.T. 26-27, 29, 36)

12. Upon arrival at the premises, an officer immediately observed a male victim lying in a grassy area across the road from the front of Licensee's premises. This victim was bleeding heavily from his left leg and was transported by ambulance to a local hospital. (N.T. 30)

13. Upon securing the area for purposes of investigation, officers observed approximately four or five spent shell casings located on Buffalo Road immediately in front of the premises. This investigation further revealed that at least one or two other individuals were hospitalized as the result of gunshot wounds relating to this incident. (N.T. 31, 34, 40-41)

14. The officers were unable to ascertain any additional information regarding this incident from any eye witnesses. (N.T. 37-38)

15. The officers did not enter Licensee's premises during the course of this investigation. (N.T. 37-38, 48-49)

DISCUSSION:

The longstanding test adopted by this court for charges against liquor licensees alleging noisy and disorderly conduct is "...whether taking all of the circumstances into consideration, the disturbance constitutes an invasion of the public peace, welfare and morals and is indicative of the way Licensee operates his business." *Wendell and Woolridge, Inc.* Citation No. 88-0608 Vol IV Sel.Op. ALJ, 145 and *Dorff Associates, LLC*, Citation No. 06-1344. Also see: *Appeal of Ciro's Lounge, Inc.* 358 A.2d 141 (Pa. Cmwlth 1976) and *In Re: A-J-C, Inc.* 401 A.2d 421 (Pa. Cmwlth 1979)

In this case, the testimony and evidence established by the Bureau relating to the two incidents in question do not meet this test and are insufficient to establish a noisy and/or disorderly charge. On June 22, 2008, the altercation appeared spontaneous leaving Licensee with little or no time to react. Moreover, Licensee's response in clearing the bar from glasses and bottles as well as the disc jockey's intervention appears to be the most appropriate action that could have been taken under these circumstances. Although the investigating police officer testified that a spent shell casing was found on the barroom floor, no other evidence was set forth to link this shell casing to the incident in question. Additionally, there were no reports of any patron being hospitalized as the result of gun shots arising from this incident.

On August 3, 2008, the testimony and evidence provided by the Bureau establishes that shots were fired outside and more than likely across the street from Licensee's premises. However, the Bureau has failed to provide any credible testimony or evidence that would link this disturbance to anything which may have occurred on or about Licensee's premises.

Accordingly, this court concludes that Licensee cannot be held accountable for disturbances which either occur spontaneously on the licensed premises, or occur outside the premises and may be beyond the reach and control of Licensee.

Finally, Licensee should not feel inhibited to contact enforcement authorities when such criminal activities may occur on or about their licensed premises for fear that their liquor license will be placed in jeopardy as the result of such actions. We must not lose sight of the fact that the principle focus is on the "peace, welfare and morals" of the community.

ORDER:

Therefore, it is hereby Ordered that Citation Number 09-1434 is dismissed.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 19<sup>TH</sup> day of November, 2009.



Roderick Frisk, J.

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MM & KM, INC.  
Citation Number 09-1434

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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.