

Mailing Date: JAN 25 2011

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1543
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-393937
	:	
KENRICH ATHLETIC CLUB	:	
121 S. 19 <sup>TH</sup> ST.	:	LID - 1117
PHILADELPHIA PA 19103-4905	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1927	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**FRANCIS TWARDY  
PRO SE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 7, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kenrich Athletic Club, License Number C-1927 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, July 21, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

Hearings were held in this matter on March 10, 2010 and July 21, 2010. Donald M. Moser represented the Licensee at the March 10, 2010 hearing. Mr. Moser requested a continuance at that time. That continuance was denied, but Mr. Moser was allowed an opportunity, after receipt of the transcript, to notify the Court if he wished to call additional witnesses. Mr. Moser did not contact the Court. The matter was inadvertently rescheduled. Licensee did appear at that hearing. Mr. Moser was advised of the day of the hearing, but declined to appear. Licensee wished to provide additional testimony and was permitted to do so.

The citation contains three counts.

The first count charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), in that on May 5, 14 and 31, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The second count 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 May 5, 14 and 31, 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.

The third count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on May 31, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement went to the licensed premises to investigate complaints for loud music and sales to nonmembers. The officer first visited the premises on May 14, 2009, arriving at 9:00 p.m. The officer was alone. The officer parked his vehicle and as he approached the premises, he began to hear loud music in the form of hip hop

Kenrich Athletic Club Citation

No. 09-1543

dance music emanating from the licensed premises. He noted that there were other licensed establishments in that area. The other establishment was on Sansom Street and he described it as being “more like a restaurant, than a nightclub” (N.T. 5-6, March 10, 2010).

2. The officer approached the premises from a distance of approximately twenty feet. As he approached, he was greeted by two bouncers at the front door. One requested identification and the other one performed a pat down of his person. The bouncers were dressed in dark navy or black clothing with the logo of the club. He noted that the shirt had “One at Rittenhouse” on the breast pocket of the shirt (N.T. 7-8, March 10, 2010).

3. The doorman asked for identification and the officer showed them his personal driver’s license (N.T. 8, March 10, 2010).

4. At the end of the main hallway, there was a female seated at the register with a sheet of paper next to her. She asked the officer if he was on the list. He said no and asked her “what list.” She stated it was the “Philly Tonight” list. She indicated that it would be ten dollars to enter the premises. On May 14, 2009, the officer was not a member of the licensed club (N.T. 9, March 10, 2010)

5. The officer was told that the drinks would cost one dollar. The officer entered the premises and paid one dollar for a rum and coke at the first floor bar (N.T. 9-10, March 10, 2010).

6. The officer ventured up to one of the upper floors, but was redirected by the bouncer. When the bouncer stopped him, he had his phone out and indicated that it was too loud on the first floor. The bouncer took him back downstairs (N.T. 10-11, March 10, 2010).

7. The premises had a disc jockey who was playing music (N.T. 11, March 10, 2010).

8. The officer remained in the premises for approximately one hour. The officer purchased a second drink and paid one dollar for it approximately thirty minutes after he had purchased the first drink. The officer purchased a rum and coke (N.T. 11-12, March 10, 2010).

9. When the officer first entered the premises, there were approximately six to ten patrons inside the premises. By the time he departed the premises, there were twenty to twenty five patrons (N.T. 12, March 10, 2010).

10. The officer was never required to present proof of membership while at the club (N.T. 12, March 10, 2010).

11. The officer departed at approximately 10:00 p.m. When the officer departed, the music was still playing. He walked approximately thirty-five yards on 19<sup>th</sup> Street until he could not hear any more music. The officer walked approximately fifty yards on Sansom Street until he could not hear the music (N.T. 12-13, March 10, 2010).

12. The officer visited the premises on May 31, 2009 arriving at 2:00 a.m. The officer was accompanied by a second officer from the Bureau of Enforcement. The officer parked the car on Sansom Street approximately fifty yards from the premises. The officer indicated he could hear the music from a distance of fifty yards. As he entered through the front door, he noted that there were two bouncers, one who asked for identification and one who performed pat down searches on both of the officers (N.T. 14, March 10, 2010).

13. The bouncers were dressed in shirts with an emblem on them indicating "One at Rittenhouse" (N.T. 14-15, March 10, 2010).

14. The bouncers requested identification, but asked for no information with regard to membership (N.T. 15, March 10, 2010).

15. The officers were told that they each had to pay ten dollars in order to enter the premises. He paid twenty dollars for himself and the other officer (N.T. 15, March 10, 2010).

16. There were fifteen patrons on the first floor and a female bartender on duty (N.T. 16, March 10, 2010).

17. The officer purchased two twelve ounce Miller Lite beers for which he paid five dollars per bottle. The bartender did not question him as to membership (N.T. 16, March 10, 2010).

18. The officers went to the back of the premises to a bathroom where there was a table. They sat for a bit. Approximately a half an hour later, they went up to the second floor. The officers watched patrons shoot pool (N.T. 16-17, March 10, 2010).

19. One male patron attempted to enter the second floor. As he was entering, he slammed his right shoulder into the door frame and spilled his drink all over the officer's leg. The officer noted that the patron was stumbling. He appeared to be upset that he had spilled his drink.

Kenrich Athletic Club Citation

No. 09-1543

The officer noted that on the second floor, there was a bar and an attendant (N.T. 17, March 10, 2010).

20. The officers decided to follow the individual. He went down the steps and came down the first flight of steps to a platform. The man was grabbing onto the railing trying to hold himself up between the wall and the railing. There were two bouncers or some other type of employees on the platform area. They were identified by their dark clothing and emblems on their shirts indicating "One Rittenhouse." As the man came down the stairs, he stumbled again. He did not fall completely but he grabbed onto an ATM that was located near the railing. He gathered himself and made sure that he was alright and attempted to gain his balance. When the patron came down the steps he stumbled off the stairs and was wobbling. When he had somewhat regained his balance, he went over to the main bar and attempted to drink but there was no liquor left in his glass because he had spilled it. He then waved his empty cup to get the attention of the bartender. When she did not come over, he retreated back up the stairs (N.T. 1820, March 10, 2010).

21. The patron waddled back and forth while holding onto the rail as he went back upstairs. The patron was described as being a white male, approximately twenty to thirty years of age, approximately five feet eleven to six feet weighing about 180 pounds. He was wearing blue jeans, black shoes, and a white and blue vertical striped shirt. He was bald (N.T. 21-22, March 10, 2010).

22. On his way up the steps, the patron passed the bouncer again. One bouncer asked if he was okay and he waved him away. He went to the back of the bar on the third floor. The patron began to wobble as he stood at the bar. The officer asked him if he was alright. The officer noted that he was wobbling and had a glassy eyed look. He looked at the officer and grunted. The bartender then came over and asked him what he wanted to drink (N.T. 22-23, March 10, 2010).

23. The officer concluded, prior to the individual receiving this drink, that he was intoxicated (N.T. 23-24, March 10, 2020).

24. When the bartender asked him what he wanted to drink, he repeated himself four or five times before the bartender could understand him. The bartender put gin and what appeared to be tonic water in a glass and served the patron. The patron paid for the drink and retreated back to the dance floor bumping into other people on the dance floor as he made his way through the crowd (N.T. 24-25, March 10, 2010).

25. The man then went into the middle of the dance crowd. As he was doing so, he bumped into people. The officer observed no bouncers on the third floor (N.T. 25-26, March 10, 2010).

26. He made the last call and attempted to clear people from the bar. The man appeared to trip over a step and as he was coming down, he fell flat on his back directly in front of the main bar. The bartender asked if he was alright. He got up and held onto the wall. The officer departed

the premises, but left the second officer in the premises to watch the patron (N.T. 26, March 10, 2010).

27. The officer saw the patron leave. He addressed him again and asked him if he was alright. He told him he was fine. The patron stuttered. He had slurred speech and continued to wobble. He smelled strongly of alcohol. He walked down the street, but then got into a cab (N.T. 26-27, March 10, 2010).

28. There was a disc jockey on the premises playing music. As the officer departed the premises, he heard a type of hip hop music. He paced off about thirty yards down 19<sup>th</sup> Street and continued to hear music (N.T. 28-29, March 10, 2010).

29. The officer departed the premises at approximately 3:10 a.m. (N.T. 30, March 10, 2010).

30. Mr. German stated that he lives in an apartment at 18<sup>th</sup> and Walnut and has resided there continuously since August of 2006. He has lived in Rittenhouse Square since 1998. His residence is diagonally across the street from the licensed premises. On May 5, 2009, he testified that he was in his residence at approximately 11:00 p.m. at night and he heard a loud noise in the vicinity of 19<sup>th</sup> and Chestnut. He heard music or some noise at approximately 200 feet away from the licensed premises. As he got closer, the noise got louder. He entered the premises after paying a cover charge (N.T. 17-20, March 10, 2010).

31. No one requested that Mr. German show proof of club membership (N.T. 21, March 10, 2010).

32. Mr. German noticed that there were huge speakers, amplifiers and equalizers on the premises. There were approximately three band members (N.T. 22-23, March 10, 2010).

33. They were set up right on the other side of the wall that would have been adjacent to the pavement. The equipment was right in front of the window and they were playing towards the other room (N.T. 23, March 10, 2010).

34. The officer purchased a twelve ounce can of beer while on the premises (N.T. 24, March 10, 2010).

35. The officer determined that the music that he heard outside the premises was the same that he heard inside (N.T. 24, March 10, 2010).

36. The officer was never questioned with regard to membership (N.T. 24, March 10, 2010).

Kenrich Athletic Club Citation

No. 09-1543

37. The officer drank some of the beer and left the remainder on top of a vanity in the bathroom (N.T. 24-25, March 10, 2010).

38. The officer took a photo of himself from his mirror image with the beer in the picture placed on the vanity (N.T. 25-27 and Exhibit B-3, March 10, 2010).

39. The officer remained in the premises for approximately half an hour. He finished the beer, crumpled up the can and put it in his sport coat pocket. Music played non-stop and the volume remained constant. When the officer left the premises, he continued to hear the music and it diminished in intensity as he got farther from the premises (N.T. 30-31, March 10, 2010).

40. The officer contacted the police department; he saw a policeman at the location (N.T. 36-37, March 10, 2010).

41. The officer indicated that he signed a membership application and it was indicated by his signature on the right, but he did not print or otherwise complete the remaining part of the information as was indicated. He testified that he completed the application on June 8, 2009 (N.T. 44, March 10, 2010).

42. Mr. Twardy indicated that the application was taken on April 29, but the officer had already been approved as a member on May 5, 2009 (N.T. 44, March 10, 2010).

43. Although a note was added to the bottom indicating that the first visit was April 29, 2009 and that the applicant was approved on May 5, 2009, the application was dated June 8, 2009 (Exhibit L-1, March 10, 2010).

CONCLUSIONS OF LAW:

Count No. 1 - On May 5, 14 and 31, 2009, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1).

Count No. 2 - On May 5, 14 and 31, 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).

Count No. 3 - On May 31, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

PRIOR RECORD:

Licensee has been licensed since August 17, 1960, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 07-1376. \$1,500.00 fine.

1. Sales to nonmembers.  
February 17, March 7 and April 1, 2007.
2. Sales between 3:00 a.m. and 7:00 a.m. April 1, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. April 1, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
April 1, 2007.

Citation No. 07-3003. \$3,500.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.  
September 8, 2007.
2. Sales to nonmembers.  
May 18 and September 8, 2007.
3. Sales between 3:00 a.m. and 7:00 a.m. September 8, 2007.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time. September 8, 2007.
5. Permitted patrons to possess or remove alcoholic beverages after 3:30 a.m. September 8, 2007.
6. Sold an unlimited or indefinite amount of alcoholic beverages for a fixed price. May 18, 2007.
7. Improper admission of members.  
May 18, 2007.

Citation No. 08-0930. \$1,000.00 fine and ten days suspension.

Kenrich Athletic Club Citation  
No. 09-1543

1. Used loudspeakers or devices whereby music could be heard outside. March 8, 2008.
2. Interfered with an Enforcement officer in the performance of his duties.  
March 8, 2008.

Citation No. 08-2299. \$3,000.00 fine and one day suspension continuing thereafter until the fine is paid.

1. Used loudspeakers or devices whereby music could be heard outside.  
April 6, 2008.
2. Sales between 3:00 and 7:00 a.m. April 6, 2008
3. Improper admission of members.  
April 6, 2008.

Citation No. 08-3062. \$1,750.00 fine and one day suspension continuing thereafter until the fine is paid.

1. Sales to nonmembers.  
November 8 and 22, 2008.
2. Used loudspeakers or devices whereby music could be heard outside.  
November 8 and 22, 2008.

DISCUSSION:

The Administrative Law Judge is responsible for determining the credibility of the witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robinson*, 561 A.2d 82 (Pa. Cmwlth. 1989). The Court finds that on May 5, 14 and 31, 2009, the Licensee sold alcoholic beverages to nonmembers. The officer subsequently signed the application, but there is no indication that the Licensee conducted any type of investigation. Any investigation would have determined that this individual had a fictitious name. Despite the application, there was no proper admission to membership. On May 5, 14 and 31, 2009, neither of these officers were members of the club.

On May 5, 14 and 31, 2009, the premises used speakers that could be heard outside. On May 31, 2009, the officer testified credibly and completely that there was a visibly intoxicated person on the premises. He was seen by the doorman and was even questioned by the doorman if he was alright. He fell, he spilled drinks, he had slurred speech and yet he continued to be served.

Under the circumstances and in view of the prior record, monetary penalties and a period of suspension shall be imposed.

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 Count Nos. 1 and 2 of this case.

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 \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 3 of this case.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,000.00.

Count No. 2 - \$1,000.00.

Count No. 3 - Three days suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kenrich Athletic Club, License Number C-1927, pay a fine of Two Thousand Dollars (\$2,000.00) 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.

IT IS FURTHER ORDERED that the Club Liquor License of Kenrich Athletic Club, License Number C-1927, be suspended for a period of three (3) days. However, the suspension period is deferred pending the renewal of Licensee's license, at which time the suspension period will be fixed by further Order.

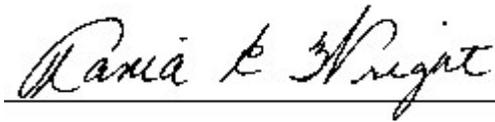
Kenrich Athletic Club Citation  
No. 09-1543

IT IS ALSO ORDERED that the requirements set forth in Section 471.1 of the Liquor Code, pertaining to Licensee's mandatory certification through the Pennsylvania Liquor Control Board Responsible Alcohol Management Program (R.A.M.P.) are hereby DEFERRED pending the renewal of Licensee's license.

The Bureau of Licensing is directed to notify the Office of Administrative Law Judge of the renewal of the license so that an Order may be entered fixing the dates of suspension.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 11<sup>TH</sup> day of January, 2011.



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.

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge

Kenrich Athletic Club  
Citation No. 09-1543

Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg, PA 17110-9661

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Kenrich Athletic Club