

Mailing Date: MAR 15 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1594
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-392998
	:	
2626 COUNTY LINE INC.	:	
2626-28 COUNTY LINE RD.	:	LID - 46509
HAVERFORD TWP.	:	
ARDMORE PA 19003-2031	:	
	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. R-AP-SS-13610	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

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 2626 County Line, Inc., License Number R-AP-SS-13610 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, October 21, 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 May 21, 2009, Licensee, by its servants, agents or employees, 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 visited the licensed premises on April 27, 2009 at approximately 10:00 p.m. The officer observed no violations during this visit (N.T. 6-8).
2. On May 21, 2009 at approximately 10:20 p.m., the officer again visited the licensed premises. He parked in a parking lot adjacent to the premises. At that time, he could hear the music emanating from the premises. At approximately 10:25 p.m., the officer entered the premises where he noted that the same music was playing inside that he had heard outside the premises. The music was in the form of rock and roll (N.T. 9-10).
3. The officer observed that the music was coming from a touch screen jukebox. The patrons paid money and selected songs (N.T. 10).
4. The officer observed numerous speakers throughout the premises. The only ones from which he heard music emanating were four large rectangular speakers positioned overhead in the corner of the bar (N.T. 10).
5. The officer observed approximately thirty-five patrons on the licensed premises (N.T. 10).
6. The officer departed the premises at approximately 11:15 p.m. Upon departure, he could still hear music outside the premises. The officer paced off in a westerly direction on County Line Road, approximately eighteen yards. The officer turned around and paced off in an easterly direction approximately twenty-five yards. He walked back towards his car and turned onto Edgemont Road. He went up Edgemont Road approximately thirty-five yards until he could no longer hear music coming from the premises (N.T. 10-11).
7. The officer visited the premises on June 4, 2009, but found no violations (N.T. 18-19).

8. This investigation of the premises resulted from a complaint made to the District Enforcement office with regard to loudspeaker violations (N.T. 12).

9. The officer did note another premises in the vicinity, however, he heard no music coming from that establishment (N.T. 13-14).

10. Thomas Thornton is a manager of the licensed premises. He indicated he was on the premises on May 21, 2009 when another manager told him that there was a gentleman that was a little suspicious looking. He looked out of the upstairs window after the officer left the premises and saw the officer pacing (N.T. 20-21).

11. The manager indicated that the music does not come out of the rectangular speakers and that those speakers are used for the disc jockey only. He stated that there is no disc jockey on Thursday nights and that only circular speakers are in use. All the speakers have a governing device (N.T. 22-23).

CONCLUSIONS OF LAW:

On May 21, 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 26, 2000, and has a record of prior violations as follows:

Citation No. 04-2097. \$350.00 fine.

1. Engaged in unlawful discrimination in that Licensee provided alcoholic beverages to female patrons at a reduced price while charging full price to male patrons. October 14, 2004.
2. Discounted the price of alcoholic beverages for a period or periods in excess of two hours in a business day. October 27, 2004.

Citation No. 05-0880. \$350.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside. March 26, 2005.

Citation No. 06-1385. \$500.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
March 12 and 25, 2006.

Citation No. 09-0746. \$1,250.00 fine and R.A.M.P.

1. Sales to minors.
February 18, 2009.
2. Possessed or operated gambling devices or permitted gambling on the licensed premises.
February 18, 2009.

DISCUSSION:

The officer testified credibly that he went to the premises on three occasions and that on only one occasion he heard music emanating from the premises. The music was found to be coming from a jukebox and there were various speakers on the premises from which music was played. Despite the efforts that the manager described, the premises still faces some problems with regard to the use of loudspeakers on the premises.

After careful review of the facts and the prior record, a \$550.00 penalty 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 this case.

Accordingly, we issue the following

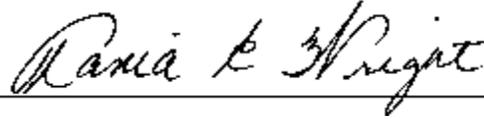
ORDER:

THEREFORE, it is hereby Ordered that Licensee, 2626 County Line, Inc., License Number R-AP-SS-13610, pay a fine of Five Hundred Fifty Dollars (\$550.00) 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.

2626 County Line, Inc.
Citation No. 09-1594

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

Dated this 1ST day of MARCH, 2010.



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

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, along with any required documentation, to:

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

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2626 County Line, Inc.