

Mailing Date: SEP 15 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1775
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-396347
	:	
C & D TRIANGLE TAVERN INC.	:	
T/A TRIANGLE TAVERN	:	LID - 55391
1338-40 S. 10 <sup>TH</sup> ST.	:	
PHILADELPHIA PA 19147-5619	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-764	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**JAMES D'ACHINO  
PRO SE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 4, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against C & D Triangle Tavern, Inc., t/a Triangle Tavern, License Number R-AP-SS-764 (hereinafter "Licensee").

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An Administrative hearing was held on Tuesday, January 19, 2010, 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 §5.32(a), in that on June 19, 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.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises on June 19, 2009. At the time, the officer was on the way to another premises that was under investigation. When he parked his state vehicle, he heard loud music emanating from the licensed premises, which was in the same block. The officer parked in the ACME parking lot across from the licensed premises (N.T. 6-7).

2. When the officer exited the premises, he could hear music emanating from the premises over the noise of street traffic. The officer noted that the music was hip-hop and/or dance music. The officer noted that there was a doorway leading to the licensed premises and that it opened onto Reed Street. A second door was open at the corner of Reed Street and South 10<sup>th</sup> Street (N.T. 7).

3. The officer crossed Reed Street and walked to the entrance of the premises at the corner of South 10<sup>th</sup> and Reed. He paced off approximately fifty feet (N.T. 7-8).

4. The officer then entered the premises, which was open and operating. There were approximately ten patrons inside the bar. The officer noted that there was a female disc jockey in the rear of the premises using electronic equipment and amplifying that music through two large speakers. The officer also observed two smaller speakers that were attached to the ceiling and wall area of the premises (N.T. 8).

5. The music inside the premises was the same music that the officer heard while approaching the premises (N.T. 8-9).

6. The officer remained in the premises for approximately ten minutes. The officer did not order a drink, but he did see service of alcoholic beverages to other patrons (N.T. 9).

7. When the officer departed the premises at approximately 12:45 a.m., he walked approximately 600 feet away from the main entrance of the premises and could still hear music coming from the premises (N.T. 9-10).

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8. The officer returned to the premises at approximately 1:35 a.m., during the early morning hour of June 19, 2009. The officer was still able to hear music emanating from the premises over the noise of the street traffic. The officer walked approximately fifty feet down South 10<sup>th</sup> Street, but was still able to hear music at that distance. He noted that the doors were still open (N.T. 10-11).

CONCLUSIONS OF LAW:

On June 19, 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 §5.32(a).

PRIOR RECORD:

Licensee has been licensed since November 4, 2005, and has a record of prior violations as follows:

Citation No. 07-0181C. \$2,000.00 and R.A.M.P. training mandated. Reconsidered and modified penalty to five days suspension and R.A.M.P. training mandated.

1. Sales to a visibly intoxicated person.  
December 14, 2006.
2. Sales to a minor.  
December 21, 2006.

DISCUSSION:

Licensee asserts that the distance was less than 300 feet and not 600 feet, which the officer heard music. He also indicated that they have received no complaints with regard to loud music. Further, the Licensee indicated that they have a male disc jockey and not a female disc jockey. Licensee indicates that he is from the neighborhood and grew up in the neighborhood and it is not unusual to hear noises, including televisions, at great distances. Licensee was disturbed that the officer did not simply tell the bartender to turn the music down.

Music from inside the licensed premises should not be heard on the outside of that premises regardless of the perceived culture or habits of the area. Licensee has no prior violations regarding noise. Under the circumstances, a moderate monetary penalty shall be imposed.

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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.

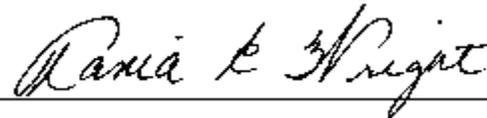
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, C & D Triangle Tavern, Inc., t/a Triangle Tavern, License Number R-AP-SS-764, pay a fine of Two Hundred Fifty Dollars (\$250.00) 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.

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

Dated this 7<sup>TH</sup> day of September, 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

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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, 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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