

Mailing Date: FEB 25 2010

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 09-2047
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-397843
 :
 v. :
 : LID - 11130
 :
 2054 JOE'S INTERNATIONAL BAR INC :
 2054 DENNIE STREET :
 PHILADELPHIA PA 19140-1723 :
 :
 PHILADELPHIA COUNTY :
 LICENSE NO. R-AP-SS-3776 :

JUDGE SHENKLE
BLCE COUNSEL: James E. Dailey, Esq.
LICENSEE: Donald J. Grant

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 1, 2009. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on August 6 and 7, 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.

At the hearing scheduled for Thursday, December 17, 2009, in Plymouth Meeting, Pennsylvania, there was initially no appearance for the Licensee; therefore, the matter began to be heard proceeded *ex parte*. After the first witness had been identified and sworn, one Donald J. Grant entered the hearing room and represented that he was Licensee's corporate officer.

Mr. Grant was given the opportunity to cross-examine the Bureau's witness, but he did not do so. He said that he had appeared only to tell me that he was trying his best to keep the noise down.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period July 23 through August 7, 2009, and sent written notice of the results of its investigation to the licensed premises by certified mail on August 17, 2009 (N.T. 10-11, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on September 1, 2009 (N.T. 10-11, Exhibit 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 November 2, 2009.

4. On August 6, 2009, a liquor enforcement officer arrived in the area of the licensed premises at about 11:35 p.m. He parked his car across the street from the premises, about 60 feet from the front door, and heard loud rap music emanating from that direction. He entered the premises and saw that the music was coming from a disk jockey inside, using loudspeakers. At 12:05 a.m. the officer left the premises and again heard the loudspeakers outside, at a distance of 184 feet (N.T. 4-9).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since May 5, 1986, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 92-2115. \$400.00 fine.

1. Unlawfully possessed and/or transported liquor within this Commonwealth. September 3, 1992.
2. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store. September 3, 1992.

Citation No. 93-0245. \$900.00 fine and revocation of Sunday Sales Permit.

1. Not a *bona fide* restaurant in that food items, eating utensils and chairs at tables were insufficient. October 28 and November 5, 1992.
2. Stored alcoholic beverages on premises not covered by the license. October 28 and November 5, 1992.
3. Furnished false information in obtaining a Sunday Sales Permit. August 3, 1992.
4. Failed to maintain complete and truthful records for a period of 2 years preceding November 5, 1992.
5. Fortified, adulterated and/or contaminated liquor. November 5, 1992.

Citation No. 97-1743. \$300.00 fine and verification conditions corrected. Fine not paid and verification not submitted and license suspended for 1 day. Licensee did not respond and license revoked with bond forfeiture. Upon receipt of fine O.A.L.J. reconsidered and suspended license for 3 days. Suspension deferred pending renewal of license.

1. Not a *bona fide* restaurant (insufficient food, utensils, dishes). July 8, 1997.

Citation No. 97-2078. \$850.00 fine.

1. Sold an increased volume of one drink without a corresponding and proportionate increase in the price of the drink.
June 25, July 9, 18, August 2, 20, 23 and September 12, 1997.
2. Sold liquor for consumption off premises.
July 9, 18, August 20 and September 12, 1997.
3. Sales to a visibly intoxicated person. August 23, 1997.

Citation No. 99-0678. 7 days suspension.

1. Sold alcoholic beverages after restaurant liquor license expired and had not been renewed and/or validated. March 19, 1999.

Citation No. 02-1554. \$400.00 fine.

1. Gambling (machine). July 24, 2002.

Citation No. 06-1133C. \$1,250.00 fine and R.A.M.P. – certification mandated.

1. Sales to a minor. March 2, 2006.
2. Sold malt or brewed beverages for consumption off premises. March 2, 2006.

Citation No. 07-0486C. \$2,000.00 fine.

1. Sales to a minor. January 25, 2007.

Citation No. 08-1993. \$300.00 fine.

1. Failed to display documentary evidence that the premises meets all sanitary requirements for a public eating place. July 18, 2008.
2. Failed to keep records on the licensed premises. July 18, 2008.
3. Fortified, adulterated and/or contaminated liquor. July 18, 2008.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

Although Licensee has a lengthy record, it appears that this is the first loudspeaker violation. On the other hand 184 feet is quite a distance to still be able to hear music emanating from the premises. On balance, I will impose a moderate monetary penalty. Licensee is cautioned that future violations of this nature will have harsher consequences.

I gave Mr. Grant the opportunity to question the Bureau's evidence on the assumption that he was an officer of Licensee. It may be that he is, but if so, the records of the Board do not reflect this. At the time this adjudication is written, the Board's records state that Bernadine A. Grant and Richard L. Hahn both hold the offices of president, secretary/treasurer, and director, with Ms. Grant listed also as the manager.

Since I know that Mr. Hahn is deceased, I suggest that the Board's records should be updated by the responsible corporate officer. If Donald J. Grant is such a person, the Board should be informed of this, with submission of the appropriate documents.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 2054 Joe's International Bar, Inc., License No. R-AP-SS-3776, shall pay a fine of five hundred dollars (\$500.00) 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 8TH day of February, 2010.



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

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