

Mailing Date: AUG 04 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2168
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-395990
	:	
2564 D & R INC.	:	
2315-25 N. 8 <sup>TH</sup> ST.	:	LID - 46488
PHILADELPHIA PA 19133	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-7435	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 22, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 2564 D & R, Inc., License Number R-AP-SS-EHF-7435 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, January 13, 2010, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

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 August 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.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on June 17, 2009 and ended on August 21, 2009. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested. The mailing was returned unclaimed. A citation dated September 22, 2009 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was returned unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on November 25, 2009 by certified mail, return receipt requested, and by first class mail. That certified mailing was returned unclaimed (N.T. 10-12 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an inspection of the licensed premises regarding an anonymous complaint alleging minors were on the premises. The officer made four visits to the premises. In addition, two other officers from the Bureau made additional visits during the course of the investigation (N.T. 5-6).

3. On August 21, 2009, the Bureau officer arrived at the premises at 11:25 p.m. There was a security officer standing outside the premises. At the time, the officer heard loud music emanating from inside the premises. The officer was accompanied by two other Bureau officers during this visit. He could hear music at a distance of approximately sixty feet from the premises. The officers ascertained that the music being played inside the licensed premises was through six speakers located in the rear right corner of the premises and three stacked. The three speakers were stacked on top of each other. The speakers were approximately 48 inches by 18 inches in size (N.T. 7-8).

4. One of the Bureau officers spoke to the employee in charge. He questioned her about the source of the music. She stated that the music was coming from a CD player that played through the speakers (N.T. 8-9).

5. The officer paced a distance of sixty paces north on North 8<sup>th</sup> Street at a distance of approximately 120 feet and also paced 40 paces south on North 8<sup>th</sup> Street at a distance of 80 feet and could hear music from those points (N.T. 9).

6. The officer conducted a routine inspection of the premises, but found no additional violations (N.T. 9-10).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On August 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 §5.32(a).

PRIOR RECORD:

Licensee has been licensed since September 13, 2000, and has a record of prior violations as follows:

Citation No. 04-1819. \$150.00 fine.

1. Operated the licensed establishment without a valid health permit or license.  
September 24, 2004.

Citation No. 08-0450. \$1,200.00 fine.

1. Operated the licensed establishment without a valid health permit or license.  
January 26, 2008.
2. Minors frequenting.  
January 26, 2008.

DISCUSSION:

Under the circumstances, a \$200.00 penalty shall be imposed. Licensee is warned that the music must be contained inside the premises. No further violations were noted despite several visits to the licensed premises and an open inspection.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §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

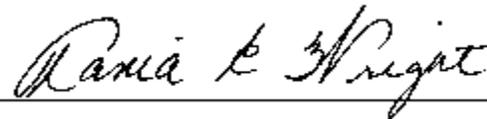
2564 D & R, Inc.  
Citation No. 09-2168

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 2654 D & R, Inc., License Number R-AP-SS-EHF-7435, pay a fine of Two Hundred Dollars (\$200.00) 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 14TH day of JULY, 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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