

Mailing Date: NOV 12 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2535
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W07-395653
v.	:	
	:	LID - 60045
SIX ELEVEN & SEVENTH STREET	:	
INCORPORATED	:	
T/A KNOTTY PINES	:	
2299 RTE 36	:	
LEEPER PA 16233-2001	:	
	:	
	:	
CLARION COUNTY	:	
LICENSE NO. R-AP-SS-20199	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Nadia Vargo, Esquire  
**LICENSEE COUNSEL:** Otto Schiberl, Vice President  
Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on November 9, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Six Eleven & Seventh Street, Incorporated, t/a Knotty Pines, License Number R-AP-SS-20199 (hereinafter Licensee).

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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 April 16, 17, 25, May 8, 9, 23, 30, June 7 and September 12, 2009, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside or outside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

An administrative hearing was conducted on September 15, 2010, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee's Vice President Otto Schiberl appeared on behalf of Licensee corporation.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on June 11, 2009, and completed its investigation on October 4, 2009. (Exhibit C-1)

2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated October 20, 2009, which was sent by certified mail and received by Licensee on October 30, 2009. (Exhibit C-1)

3. The citation was issued on November 9, 2009, and was sent by certified mail and received by Licensee on November 12, 2009. (Exhibits C-2, C-3)

4. Licensee's premises is located approximately one mile north of a state park known as Cooks Forest and is surrounded by several cottages generally occupied seasonally during the warmer climate. (N.T. 22-23, 57)

5. Whispering Oaks is a business owned by Nathan Clements and his wife, Jody Meusel and consists of seven cabins located on approximately 13 acres bordering the property line of Licensee's premises. During the period April 16, 2009 through September 12, 2009, Nathan Clements and Jody Meusel resided in what they referred to as the office cabin while renting the remaining cabins to guests with a two-night minimum stay. The office cabin is located approximately 50 feet from the rear door of Licensee's premises. (N.T. 23-24, 26, 28, 49, 57)

6. During the late evening of Thursday, April 16, 2009, and continuing into the early morning hours of Friday, April 17, 2009, Jody Meusel, while in her cabin, was disturbed by the sound of amplified prerecorded music emanating from within Licensee's premises. Upon contacting Licensee's Manager Otto Schiberl, Mr. Schiberl and Mrs. Meusel walked over to her cabin at which time the sound of the amplified music emanating from Licensee's premises was heard. Mrs. Meusel and Mr. Schiberl then proceeded to Licensee's premises at which time the doors and windows of the premises were closed. Upon returning to her cabin, Mrs. Meusel noted that the sound of this amplified prerecorded music emanating from Licensee's premises was still audible, but was more tolerable. (N.T. 29-33, 57)

7. On Friday, April 25, 2009, at approximately 2:00 p.m., Jody Meusel heard the sound of amplified prerecorded music emanating from within Licensee's premises. Mrs. Meusel determined that an event was sponsored by Licensee on the deck of its premises involving a disc jockey providing prerecorded music through an amplified sound system. This event was scheduled to run for three hours from 2:00 p.m. to approximately 5:00 p.m. On this occasion, Mrs. Meusel along with her husband, Nathan Clements, walked their property known as Whispering Oaks to each of the seven cabins where the sound of this amplified music was clearly heard at each location. (N.T. 34-35, 57)

8. On Friday, May 8, 2009, at approximately 8:30 p.m., Mrs. Meusel and her husband were disturbed by the sound of amplified prerecorded music emanating from Licensee's premises. At this time, Mrs. Meusel and her husband walked the Whispering Oaks property and determined that the sound of this music was heard at five of the seven cabins. The music was not able to be heard at the two cabins located furthest from Licensee's premises. Mrs. Meusel and her husband then called Licensee's premises and invited the person in charge referred to as "Guy" to witness the sound of the amplified music emanating on to their property. The individual at Licensee's establishment did not investigate and the sound of the amplified music increased during the course of the evening. Mrs. Meusel testified that during the course of the evening, she and her husband were watching a movie inside their cabin and emphasized that the sound of the music emanating from Licensee's premises was louder inside their cabin than the movie itself. (N.T. 37-40, 57)

9. On Saturday, May 9, 2009, Mrs. Meusel and her husband were disturbed by the sound of amplified music emanating from within Licensee's premises and proceeded to the premises to discuss this matter with Mr. Schiberl. Upon learning that Mr. Schiberl was not on the premises, Mrs. Meusel and her husband spoke with the disc jockey referred to as "Greg." Upon advising "Greg" that they were being disturbed by the sound of amplified music at the Whispering Oaks property, he agreed to lower the volume of the music. Upon returning to their property, Mrs. Meusel and her husband continued to hear the sound of this amplified music but at a reduced volume and only on the outside of their cabin. (N.T. 41-42, 57)

10. On Saturday, May 23, 2009, Norman Clements and his wife were disturbed by the sound of amplified music emanating from within Licensee's premises. Mr. Clements noted that the juke box located at Licensee's downstairs bar was "blaring" and was described by Mr. Clements as "very loud" inside his cabin. Mr. Clements then walked over to the downstairs bar area of Licensee's premises and noted that the door was open. Mr. Clements leaned his head into the open door and asked the bartender referred to as "Guy" to turn it down. Mr. Clements then indicated that he was ignored by "Guy" and the two patrons. Mr. Clements then closed the barroom door as he departed. (N.T. 42-44, 58-59)

11. On Saturday, May 30, 2009, shortly after midnight, Mrs. Meusel "got up" after not being able to sleep as the result of the sound of amplified music emanating from Licensee's premises. Mrs. Meusel then walked over to the bar. Upon entering, Mrs. Meusel sat at the bar and enjoyed a soda and noted that the prerecorded amplified music was provided by a disc jockey. (N.T. 43, 57)

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12. On Sunday, June 7, 2009, between 10:00 p.m. and 11:00 p.m., Mr. Clements was disturbed by the sound of amplified music emanating from within Licensee's premises and noted that the windows and doors to the upstairs and downstairs bar areas of Licensee's premises were open as it was a very warm evening. Mr. Clements called the premises and asked that the music be turned down and that the windows and doors be closed to reduce the disturbances created by the amplified music. Mr. Clements noted that the windows and doors of the premises were closed for a while and that approximately two hours later, they were reopened. Throughout the entire time, Mr. Clements was able to hear the sound of this amplified music emanating from Licensee's premises although at more extreme levels during the periods when the windows and doors were open. The source of this amplified music was determined to be a juke box. (N.T. 59-61)

13. On Saturday, September 12, 2009, Mr. Clements was disturbed by the sound of loud amplified music emanating from the outdoor "bandstand" area of Licensee's premises. This outdoor "bandstand" area is separated from Licensee's Whispering Oaks property by a privacy fence. Upon requesting that the volume of this amplified music be lowered, Mr. Clements indicated that the volume was lowered only after Mr. Schiberl was located. The reduction in the volume of this music resulted in an improvement, however, the amplified music continued to be heard on the Whispering Oaks property. The amplified music was provided by a disc jockey. (N.T. 60-65)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982). Also see: *Hude v. Commonwealth of Pa.*, 423 A.2d 15 (Pa. Cmwlth. 1980)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.
2. On April 16, 17, 25, May 8, 9, 23, 30, June 7 and September 12, 2009, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside or outside of its 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.

PRIOR RECORD:

Licensee has been licensed since May 15, 2008, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or 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.

This court is of the opinion that the nature of this violation is a significant one, in that those individuals who reside or conduct their businesses within the community have the right to proceed with their personal and/or business affairs without the intrusion of such "noise pollution."

In mitigation, the record discloses that this citation represents Licensee's first violation.

For the foregoing reasons, a penalty shall be imposed in the amount of \$400.00.

ORDER:

THEREFORE, it is hereby ordered that Six Eleven & Seventh Street, Incorporated, t/a Knotty Pines, License Number R-AP-SS-20199, pay a fine of \$400.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 26<sup>TH</sup> day of October, 2010.



Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 to:

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

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Six Eleven & Seventh Street, Incorporated