

Mailing Date: OCT 29 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2582
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-395754
v.	:	
	:	LID - 61481
PARK RESTORATION LLC	:	
T/A THE BEACH CLUB	:	
12382 CENTER STREET	:	
CONNEAUT LAKE PA 16316-4804	:	
	:	
	:	
CRAWFORD COUNTY	:	
LICENSE NO. R-AP-SS-EHF-16803	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Emily Gustave, Esquire
LICENSEE COUNSEL: Steven Popovich, LLC Manager
Gregory Sutterlin, LLC Member
Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 16, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Park Restoration, LLC, t/a The Beach Club, License Number R-AP-SS-EHF-16803 (hereinafter Licensee).

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 July 11 and September 12, 2009, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside 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 Emily Gustave, Esquire. Licensee's LLC Manager Steven Popovich and LLC Member Gregory Sutterlin appeared on behalf of Licensee.

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 12, 2009, and completed its investigation on October 3, 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 23, 2009, which was sent by certified mail and received by Licensee on October 24, 2009. (Exhibit C-2)
3. The citation was issued on November 16, 2009, and was sent by certified mail and received by Licensee on November 23, 2009. (Exhibits C-3, C-4)

COUNT 1

4. Licensee's premises is located on the grounds of an amusement park known as Conneaut Lake Park and is near a beach and small lake and hotel which is also on the park grounds. (N.T. 16, 18)

July 11, 2009

5. On Saturday, July 11, 2009, at 5:10 p.m., a Liquor Enforcement officer entered Licensee's premises in an undercover capacity and observed a female tending bar and rendering service of alcoholic beverages to approximately ten patrons inside the premises with approximately ten additional patrons observed on the outside deck area of the premises. (N.T. 13-14)
6. The Enforcement officer further noted that a disc jockey referred to as "Sparky" was providing entertainment through an amplified sound system set up on the outside deck area. (N.T. 14)

7. The Enforcement officer then commenced an outside surveillance where he heard the sound of amplified music emanating from within Licensee's premises approximately 225 yards in a northwesterly direction at a fence which separated the amusement park where the premises is situated from several cottages. This surveillance further revealed that the amplified music emanating from within Licensee's premises was audible at distances of approximately 15 yards in a northerly direction and 10 feet in a southerly direction near the lake. (N.T. 14-15)

8. In the opinion of the Enforcement officer, the outside surveillance of Licensee's premises may have affected approximately three cottages. (N.T. 15)

9. The Enforcement officer departed the area at 5:35 p.m. (N.T. 16)

September 12, 2009

10. On Saturday, September 12, 2009, at 9:25 p.m., two Liquor Enforcement officers arrived at Licensee's premises and noted that a wet T-shirt contest had just concluded which took place on the beach area immediately off the premises. At this time, the Enforcement officers heard the sound of amplified music emanating from within Licensee's premises. (N.T. 24-25)

11. The Enforcement officers entered Licensee's premises in an undercover capacity and observed several bartenders at two bars rendering service of alcoholic beverages to approximately 100 patrons. The Enforcement officers further noted that entertainment was being provided by a live band referred to as "Hern Brothers" performing from the upper level dining area of the premises through an amplified sound system. (N.T. 25-27)

12. The Enforcement officer departed Licensee's premises at 10:45 p.m. and proceeded to conduct an outside surveillance. While outside and facing the front door of the premises, one of the Enforcement officers turned right and walked approximately 250 feet towards the hotel and was able to hear the sound of this amplified music emanating from Licensee's premises. (N.T. 25-26)

13. The Enforcement officer returned to the front of Licensee's premises and proceeded through the parking lot at a distance of 160 feet where the music emanating from within Licensee's premises continued to be audible. (N.T. 26)

14. The Enforcement officers departed Licensee's premises at 11:00 p.m. (N.T. 26)

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 July 11 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.

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes 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).

PRIOR RECORD:

Licensee has been licensed since May 20, 2009, 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.

In mitigation, at the administrative hearing, Licensee through its Corporate Officer Gregory Sutterlin represents that measures have been taken to assure that the sound of amplified music does not emanate outside its licensed premises in the future. In further 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 \$200.00.

ORDER:

THEREFORE, it is hereby ordered that Park Restoration, LLC, t/a The Beach Club, License Number R-AP-SS-EHF-16803, pay a fine of \$200.00 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.

PARK RESTORATION, LLC
Citation Number 09-2582

Jurisdiction is retained to ensure compliance with this Order.

Dated this 12TH 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.

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

Citation No. 09-2582
Park Restoration, LLC