

Mailing Date: DEC 03 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0414
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-402740
v.	:	
	:	LID - 58226
CL HANKEY, LLC	:	
T/A THE PIKE RESTAURANT AND	:	
LOUNGE	:	
985 BALTIMORE PIKE	:	
GETTYSBURG, PA 17325	:	
	:	
ADAMS COUNTY	:	
LICENSE NO. R-AP-SS-EHF-21262	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL BALLARON
LICENSEE: FRANCIS X. O'BRIEN, ESQUIRE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 11, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CL HANKEY, LLC, License Number R-AP-SS-EHF-21262 (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 October 10, 11 and 17, 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.

The investigation which gave rise to the citation began on October 26, 2009 and was completed on February 3, 2010; and notice of the violation was sent to Licensee by Certified Mail on February 26, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 31, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Speros George Marinos lives at 912 Baltimore Pike in Cumberland Township with his wife. Their residence is approximately 600 feet southwest of the licensed premises (N.T. 23-24).

2. On October 10, 2009 at approximately 9:00 p.m., Speros and his wife heard loud music emanating from the licensed premises. At 10:00 p.m. the noise got louder. At close to midnight, it got even louder (N.T. 25-26).

3. The music emanating from the licensed premises finally stopped at 1:30 a.m., October 11, 2009 (N.T. 27).

4. Sandra Lynn Baldwin is employed as the night auditor/night manager at the Comfort Suites Hotel which is located at 945 Blatimore Pike, Gettysburg, PA. The hotel is between 40 and 50 feet from the licensed premises (N.T. 30-31).

5. On October 10, 2009, Baldwin heard music coming from the licensed premises when she arrived at the Comfort Suites Inn to begin her shift at 9:45 p.m. (N.T. 32).

6. Baldwin heard the music as soon as she got out of her car. She walked into the Comfort Suites Inn and could still hear the music on the inside of the doors (N.T. 33).

7. Baldwin proceeded to the front desk, and, while sitting at the front desk she could hear the music emanating from the licensed premises (N.T. 33-34).

8. After a guest at the Comfort Suites Inn complained about the noise, Baldwin called police at 10:50 p.m. (N.T. 34).

9. The police arrived at 11:15 p.m. At this time, Baldwin could still hear music emanating from the licensed premises (N.T. 35).

10. Baldwin continued to hear the music emanating from the licensed premises until 1:30 a.m. on October 11, 2009 (N.T. 36)

11. On October 17, 2009, Baldwin arrived at the Comfort Suites Inn to begin her shift between 9:30 and 9:45 p.m. (N.T. 37).

12. At the time Baldwin arrived she could hear music emanating from the licensed premises (N.T. 37).

13. Later in the evening, Baldwin could hear the music inside the Comfort Suites Inn. She called the Cumberland Township Police and asked them to try to get the volume turned down. By the time the police arrived, Baldwin could no longer hear the music (N.T. 37).

14. After the police left the volume of the music increased and she could hear it sitting at the desks in the Comfort Suites Inn (N.T. 38).

15. On all of the dates referenced in the citation, music was being played on the licensed premises that was amplified through loudspeakers (N.T. 11-12).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The record establishes that on the dates set forth in the citation, music amplified through loudspeakers was heard outside the licensed premises at the residence of Speros Marinos and at the Comfort Suites Inn. It is, therefore, clear that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since May 3, 2007, and has had five prior violations:

Citation No. 07-2254. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside. August 11, 2007.

Citation No. 08-1472C. Fine \$750.00.

1. Sales to a minor. May 8, 2008.

Citation No. 08-2151. Fine \$600.00.

1. Used loudspeakers or devices whereby music could be heard outside. July 10, 11 and 12, 2008.

Citation No. 09-0900C. Fine \$2,500.00.

1. Sales to a minor. March 11, 2009.

Citation No. 09-2515. Fine \$1,000.00.

1. Used loudspeakers or devices whereby music could be heard outside. September 4, 5, 6, 12, 13, 19 and 20, 2009.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,000.00.

ORDER

THEREFORE, it is hereby ordered that Licensee CL HANKEY, LLC, pay a fine of \$1,000.00 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 pending final resolution of the penalty in this matter.

Dated this 10TH day of November, 2010.



Daniel T. Flaherty, Jr., J.

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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 submit 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.** Make 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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CL Hankey, LLC