

Mailing Date: FEB 25 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0640
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-408070
	:	
LA QUINTA INC.	:	
4602-4604 N. 5 TH ST.	:	LID - 49515
PHILADELPHIA PA 19140-1409	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-978	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

PATRICK M. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 6, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against La Quinta, Inc., License Number R-AP-SS-OPS-978 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, December 9, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

Licensee requested a continuance in that his clients did not appear at the hearing and that this was the third listing of the matter. After two previous requests by Licensee, the continuance was denied. Licensee was given an opportunity to relist the matter if he found that he had additional evidence that he wished the Court to hear. Licensee was given thirty days from receipt of the transcript to make that determination. The transcript was received by the Office of Administrative Law Judge on December 20, 2010. No request was made by Licensee's attorney for relisting, therefore, the Office of Administrative Law Judge will decide the matter based solely on the record of December 9, 2010.

The citation charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on February 21 and March 6, 2010, 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. An officer from the Bureau of Enforcement investigated the licensed premises. His first visit to the premises was February 21, 2010 at 1:45 a.m. He arrived in an unmarked state vehicle. He parked the car 150 feet away from the premises and conducted a surveillance. His windows were up in the state vehicle, however, he could hear loud music emanating from the premises (N.T. 12-13).

2. At approximately 1:53 a.m., the officer observed two females being physically ejected from the premises. There was a large crowd gathering. The two females began fighting, in front of the premises, pulling one another's hair and throwing fists (N.T. 13).

3. A Hispanic male attempted to break up the fight. The officer thought the matter was going to escalate therefore, he called 911. Approximately five minutes later, six Philadelphia police officers arrived. The fighting ceased and the crowd was disbursed (N.T. 13).

4. The Bureau officer identified himself to the police officers and indicated that he was going inside to speak with the owner. The Licensee had shut the metal gates to the premises so two Philadelphia police officers and the Bureau officer entered through the side door at approximately 2:00 a.m. There were approximately forty people still inside the premises at 2:05 a.m. (N.T. 14-15).

5. The Bureau officer went to the bar, spoke with a female bartender and asked her if he could speak with the owner. She pointed to an individual dressed in formal attire. The individual did not speak English and appeared to be intoxicated (N.T. 15).

6. The bartender then introduced him to Sarah Belle Rodriguez, who identified herself as the employee in charge. The officer told her that the music was entirely too loud. He told her that there were residences around the premises and the fighting would not be tolerated (N.T. 15-16).

7. When the officer entered the premises at 2:05 a.m., the music was not on but he did see speakers inside the premises. There was a disc jockey who was cleaning up (N.T. 16).

8. Another individual approached the officer and identified himself as the owner's son, Elin Rodriguez. The officer repeated this information to Mr. Rodriguez with regard to the loud music and the fighting (N.T. 16).

9. After speaking with Sarah Rodriguez and Elin Rodriguez, the officer spoke with a Philadelphia police officer and then departed the premises (N.T. 16).

10. The officer indicated that there was another premises within two blocks from this one, but he was able to determine that the music was coming from this premises (N.T. 16-17).

11. On Saturday, March 6, 2010, the officer visited the premises at 9:50 p.m. He identified himself to the bouncer who was also there on the officer's previous visit to the premises when the fight occurred. The bouncer's name was Ben Lopez. The officer was accompanied by a second Bureau officer. The two parked in a pharmacy parking lot approximately 150 feet away from the premises. As soon as the officers got out of the car, they could hear the music. They approached the bouncer and identified themselves to him. Again, they asked to speak with the owner, Abel Rodriguez (N.T. 17).

12. The officer advised him that the music was too loud and that there were neighbors complaining about the loud music. The officer spoke with the disc jockey and advised that the music was too loud. He was cooperative and turned the music down (N.T. 18).

13. The officer saw four very large speakers in the front of the premises. He also saw a laptop and believed that the music was being amplified from the laptop (N.T. 18).

14. As the officers were walking back to the car, they determined that the music outside was the same music as they heard when they went inside the premises (N.T. 18).

15. The officer indicated that initially he went to the premises to investigate a report of selling alcohol without a license and nuisance activity around the bar, which included loud music, loud patrons and things of that nature (N.T. 19-20).

CONCLUSIONS OF LAW:

On February 21 and March 6, 2010, Licensee, by its servants, agents or employees, 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 Section 5.32(a).

PRIOR RECORD:

Licensee has been licensed since July 17, 2002, and has a record of prior violations as follows:

Citation No. 07-1338 and 07-2023, As Consolidated. \$2,000.00 fine.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
May 20, June 24 and July 22, 2007.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 20, 2007.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
May 20, 2007.
4. Operated the licensed establishment without a valid health permit or license.
April 9, 21 and May 20, 2007.
5. Used loudspeakers or devices whereby the sound of music could be heard outside.
June 24 and July 22, 2007.

DISCUSSION:

The officer offered credible testimony indicating that on February 21 and March 6, 2010, he visited the licensed premises and determined that there was loud music coming from speakers inside the premises, which could be heard on the outside of the premises. The officer noted that there was a fight going on immediately outside and warned the Licensee about the nature of the operation and indicated that there had been complaints from neighbors.

Under the circumstances in that there is a prior violation which includes loudspeakers, a \$450.00 penalty shall be imposed. Licensee is on notice that they need to make some changes if they plan to continue operating.

La Quinta, Inc.
Citation No. 10-0640

PENALTY:

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

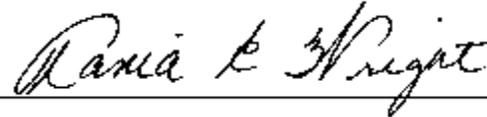
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, La Quinta, Inc., License Number R-AP-SS-OPS-978, pay a fine of Four Hundred Fifty Dollars (\$450.00) 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 10TH day of February, 2011.



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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La Quinta, Inc.
Citation No. 10-0640

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, 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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