

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 10-1397
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-412763
v. :
 : LID - 47478
BIJOU LLC :
927-939 N DELAWARE AVE :
PHILADELPHIA PA 19123-3110 :
 :
PHILADELPHIA COUNTY :
LICENSE NO. R-AP-SS-EHF-15561 :

JUDGE SHENKLE
BLCE COUNSEL: James E. Dailey, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 20, 2010. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on May 21, 22, 28 and 29, 2010, by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

A hearing was held on December 8, 2010, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. In May of 2010, liquor enforcement officers investigated complaints from residents in three separate condominium units near Licensee's premises (N.T. 4).

2. On May 21, 2010, a liquor enforcement officer visited the condo residence of one of the people who complained, on the 11th floor of a condominium building, at 10:45 p.m. From that resident's balcony the officer could hear a disc jockey as well as if he was right there with him. Other than the disc jockey, the officer heard primarily bass tones. He left the condominium residence and went to the licensed premises. There was a long line to enter, however, so the officer left the area to work on an investigation elsewhere (N.T. 24-27).

3. The officer returned to the premises at about 1:00 a.m. on May 22, 2010. The line was shorter. He was patted down and paid a \$15 cover charge, then went to the open area of the premises. There was music playing through loudspeakers, and a disc jockey was singing along and dancing. The music was of the same type the officer had heard inside the condominium residence (N.T. 27-31).

4. On May 28, 2010, between 11:30 p.m. and midnight, officers went to the residence of another of the people who complained, on the 20th floor of a condominium building. When the officers entered the unit, one of them heard music coming from the outside, through the open balcony door. When the resident closed that door the officer couldn't hear the music as well, but bass tones were still audible inside the residence (N.T. 5-7).

5. The officers left the condominium residence at midnight and walked to the licensed premises. There was a line of people, approximately 100 to 150, waiting to get in. At the front of the line the door person refused entry to one of the officers because he was wearing a hooded sweatshirt. The other officer was patted down and permitted into the premises after paying a \$20 cover charge. Inside the premises, he saw 300 to 400 people in a courtyard area (N.T. 8-9).

6. A disc jockey was providing entertainment, using a microphone and loudspeakers. The music being played was the same type as the officer had heard in the condominium unit. The stage was facing the condominium buildings. When the officer left the premises he continued to hear the music from the loudspeakers at a distance of 75 feet south of the premises on Delaware Avenue (N.T. 10-12).

7. This licensed establishment includes a substantial outdoor area which was not covered on the dates referred to above. Licensee has since then entered into contracts for the erection of a structure which will better enclose the premises. Licensee's officers have made substantial efforts over the years to address the noise complaints from a few residents of the condos, which were erected after the licensed premises began operation (N.T. 41-89).

CONCLUSIONS OF LAW:

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on May 21, 22, 28 and 29, 2010, by permitting the use on the inside of the licensed premises of a loudspeaker whereby the sound of music and other entertainment could be heard outside.

PRIOR RECORD:

Licensee has been licensed since December 20, 2001, and has had three prior violations:

Citation No. 04-2031. \$500.00 fine.

1. Loudspeakers could be heard outside. August 30, 2004.
2. Improper liquor license display. October 22, 2004.

Citation No. 05-2500. \$600.00 fine.

1. Loudspeakers could be heard outside. July 2 and August 21, 2005.

Citation No. 08-2533. \$700.00 fine.

1. Loudspeakers could be heard outside.
On 21 dates between June 21 and August 29, 2008.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Bijou, LLC., License No. R-AP-SS-EHF-15561, shall pay a fine of eight hundred dollars (\$800.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 14TH day of January, 2011.



David L. Shenkle, J.

jb

NOTICE: 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 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