

Mailing Date: FEB 14 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1825
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-415738
v.	:	
	:	LID - 53321
KOSHER DAIRY RESTAURANT LLC	:	
1903 CHESTNUT ST	:	
PHILADELPHIA PA 19103-3500	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-15491	:	

JUDGE SHENKLE
BLCE COUNSEL: James E. Dailey, Esq.
LICENSEE: Avram Hornik, manager-member

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 7, 2010. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on August 7, 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 January 5, 2010 in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. A liquor enforcement officer testified in this case that he heard hip-hop style music emanating from the licensed premises at a distance of thirty feet at about 11:05 p.m. on August 7, 2010. The officer entered the premises and found that the source of the music was a disc jockey inside, who was using loudspeakers. The officer heard no fluctuation in the volume of the music during the hour and 15 minutes he remained in the premises. When he left, the music was still playing, but the officer did not hear it outside the building at that time (N.T. 5-13, 19).

2. The officer had visited the premises on two other occasions during this investigation. Of the six times he either entered or left the premises, a loudspeaker violation was observed only once, in the incident described in the previous finding (N.T. 15).

3. Licensee's preferred musical format is classic rock n' roll. Hip hop or rap music is not played in the premises (N.T. 31-32).

CONCLUSIONS OF LAW:

The weight of the evidence did not support the proposition that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on August 7, 2010.

ORDER

THEREFORE, it is hereby ORDERED that Citation No.10-1825 is DISMISSED.

Dated this 27TH 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.