

Mailing Date: MAR 28 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1895
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-417635
v.	:	
	:	LID - 60586
2008 RIVER WALCK SALOON, LLC	:	
101 CENTRE ST.	:	
PO BOX 8	:	
PARRYVILLE, PA 18244	:	
	:	
CARBON COUNTY	:	
LICENSE NO. R-AP-SS-EHF-10526	:	
	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** Craig A. Strong, Esquire  
**LICENSEE:** Theodore J. Zeller, III, Esquire

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on September 8, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against 2008 River Walck Saloon, LLC (Licensee), License Number R-AP-SS-EHF-10526.

The citation<sup>1</sup> charges Licensee with violations of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on August 21 and 22, 2010, Licensee, by servants, agents or employees, used, or permitted to be used on the inside/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.

An evidentiary hearing was conducted on February 10, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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1. Commonwealth Exhibit No. C-2, N.T. 5.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on August 16, 2010 and completed it on August 22, 2010. (N.T. 7)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on August 24, 2010. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)

3. A Bureau Enforcement Officer arrived in the area of the premises on August 21, 2010 at approximately 11:30 p.m. There were speakers located throughout the parking lot. The speakers are situated on the ground and housed within a decorative, fake rock. The Officer heard an individual announcing happy birthday wishes and songs through this system. (N.T. 7-11)

4. The Officer entered the premises. He recognized the voice he heard in the parking lot through the amplification system as that of a disc jockey who was on the premises. The Officer departed the premises about twenty minutes after midnight, August 2, 2010. He walked the perimeter of the parking lot. He heard the music coming from the premises through the speakers in the parking lot. He mounted his vehicle and drove out of the parking lot into a residential area. At a location of approximately 300 feet from the premises, he heard a bass sound which originated in the licensed premises and was amplified through the speakers located in the parking lot. (N.T. 11-15)

5. All of the controls for the sound amplification system in the parking lot were contained in a building that is separate from that of the licensed premises. It is the landlord who had complete control over the amplification system. Licensee is not permitted to change the wiring for the amplification system without the landlord's permission. The landlord is also one of Licensee's two Members. (N.T. 23-25; 28-31)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The citation is **sustained** as charged.

DISCUSSION:

This matter presents a slight modification to the facts of Adjudication No. 10-2040, Cusat's Café, Inc., heard one day earlier in the same hearing facility. I commend reading that Adjudication to Licensee as the reasoning and cases cited therein are applicable here.

Licensee posits a unique argument based on the location and control of the speakers. Licensee suggests, the instant facts are no different import than when a mall operator provides amplified music to the outside mall areas. The argument fails because the source of the music provided to the outside area, was the licensed premises. I would be more willing to agree with Licensee had the amplified music in this matter not been provided by Licensee.

Licensee's argument deteriorates even further when one considers the parking lot owner, who controls the parking lot amplification system, is also one of two LLC members. Licensee asks me to conclude Licensee's landlord/LCC Member controls the sound as landlord, not as LLC member. How am I able to draw distinction that defies common sense? Our law recognizes this reality which is embodied in the principle of Piercing The Corporate Veil.

PRIOR RECORD:

Licensee has been licensed since January 12, 2009, and has had one prior violation:

Adjudication No. 09-1678. Fine \$150.00.  
Fortified, adulterated and/or contaminated liquor.  
June 23, 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.

I impose a \$300.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$300.00 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.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 9<sup>TH</sup> day of March, 2011.



Felix Thau, A.L.J.

pm

**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

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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

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