

Mailing Date: SEP 16 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2041
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-415226
	:	
CHICKIE'S AND PETE'S INC.	:	
T/A CHICKIE'S AND PETE'S CAFE	:	LID - 44218
BOULEVARD PLAZA STORE 350	:	
ROOSEVELT BLVD. &	:	
HALDEMAN ST.	:	
PHILADELPHIA PA 19115	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-OPS-4801	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 28, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Chickie's and Pete's, Inc., t/a Chickie's and Pete's Cafe, License Number R-AP-SS-EHF-OPS-4801 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, January 6, 2011, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

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 July 11, 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.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement visited the licensed premises on Sunday, July 11, 2010 at 1:15 a.m. He noted that the premises was located in a shopping center about thirty yards off of Roosevelt Boulevard (N.T. 5-6).

2. The sign outside indicated that the premises was Chickie's and Pete's. The officer parked south of the establishment at a distance of approximately fifty to sixty feet from the premises (N.T. 7-8).

3. When the officer was entering the shopping center, he heard music emanating from the licensed premises. Therefore, he turned off the Boulevard into a side street adjacent to the building and pulled into the parking lot where he continued to hear music emanating from the licensed premises (N.T. 8-9).

4. The officer saw other businesses in the area, but none that were operating at this hour (N.T. 9).

5. The officer first walked to the licensed premises to make sure that the music was in fact coming from that location. The officer paced from Chickie's and Pete's to another restaurant, which he determined was approximately 150 yards south of the premises. He could still hear music at that point (N.T. 9-10).

6. The officer entered the premises through a tent area (N.T. 10-11).

7. The officer entered the tent area and noted that the premises was open and operating. He walked into the tent area and he noted that there was a disc jockey to his right and a bar area straight ahead. The officer noted that there were approximately five one by two feet speakers located throughout the tent area. The disc jockey was playing music in the tent area from a computer (N.T. 12-13).

8. The officer was accompanied by another officer from the Bureau Enforcement (N.T. 14).

9. There were approximately fifteen people in the tent area. The bar was operational at this time. The officer remained in the premises approximately 45 minutes. The officer left the premises at 2:00 a.m. and music was still playing (N.T. 14-15).

10. The officer noted that the music was not as loud as when he arrived (N.T. 15).

11. The officer made a second visit to the premises on August 8, 2010 along with a second officer from the Bureau. At that time, the premises was open and operating. There was no disc jockey present. No violations were noted (N.T. 15-16).

12. Another officer from the Bureau of Enforcement was assigned to go to the premises on September 5, 2010 at approximately 1:00 a.m. He arrived at the premises and found that it was open and operating. No violations were reported (N.T. 16).

13. The officer visited the premises as the result of a complaint. The officer attempted to contact the complainant prior to his first visit but could not reach him. He did reach him in between his first and second visit to the premises (N.T. 21-22).

14. The officer drank draft beer while on the premises (N.T. 22).

15. Peter Ciarrocchi is Licensee, the owner of the licensed premises (N.T. 25).

16. The Licensee indicated that the restaurant is approximately 7,000 square feet with an attached patio. The patio has a physical cylinder block wall covered with stucco around the perimeter, and a fabric tent covers the entire patio. There is no air conditioning in that area and the windows would have been open during July. The Licensee indicated that the floor is made of aesthetic concrete. There is food and alcoholic beverage service in this area. The Licensee indicated that there is an entry door to the area (N.T. 26-27).

17. The Licensee indicated the premises is bordered by Roosevelt Boulevard and commercial properties and that there are no homes in the vicinity (N.T. 28).

CONCLUSIONS OF LAW:

On July 11, 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a).

Chickie's and Pete's, Inc.
t/a Chickie's and Pete's Café
Citation No. 10-2041

PRIOR RECORD:

Licensee has been licensed since June 3, 1999, and has no record of prior violations.

DISCUSSION:

There is a requirement in the Regulations that music played through loudspeakers or similar devices not be heard outside the premises. The Court notes that there is commercial property and a highway surrounding the area. The Court also notes that the complainant appears to have been a patron of the premises, rather than a resident who was disturbed by music. Licensee indicated that if he had been notified that the noise was too loud, he would have turned the music down. The Licensee takes great pride in his ownership of the premises and his reputation.

The officer made three visits to the premises, but heard the sound of music outside the premises on only one occasion. However, on that one occasion, music was heard a great distance from the premises.

After consideration of the facts and circumstances, a very moderate monetary penalty shall be imposed.

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, Chickie's and Pete's, Inc., t/a Chickie's and Pete's Café, License Number R-AP-SS-EHF-OPS-4801, pay a fine of Two Hundred Dollars (\$200.00) 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.

Chickie's and Pete's, Inc.
t/a Chickie's and Pete's Café
Citation No. 10-2041

Jurisdiction of this matter is retained.

Dated this 12TH day of September, 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.

If you wish to appeal the decision of the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact Chief Counsel's Office at 717-783-9454.

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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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Chickie's and Pete's, Inc.