

Mailing Date: JUL 29 2011

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 10-2681
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W09-417462
 :
 v. :
 : LID - 57834
 :
 ANDREA M BABARSKY :
T/A THUNDER ROAD :
121-123 N MAIN ST :
SHENANDOAH PA 17976-1756 :
 :
 :
SCHUYLKILL COUNTY :
LICENSE NO. R-AP-SS-EHF-17691 :

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: Andrea M. Babarsky

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on December 22, 2010. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on October 17, 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 June 17, 2011, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On October 17, 2010, liquor enforcement officers arrived in the area of the licensed premises at 12:30 a.m. At the place where they parked, approximately a block away, the officers heard bass music coming from the establishment. They went to the front of the building and paced off 100 paces south on North Main Street. At that point, they could hear music. They returned to the entrance and went another 50 paces north, from which point they could hear the bass. The officers then entered the premises and found that the source of the music they had heard outside was a four-piece rock band known as Hedwig. The band's music was amplified through at least two loudspeakers that were about three feet by two feet in size (N.T. 6-7, 22).

2. Bureau officers made about five visits to the premises during this investigation, and the observations given in the preceding paragraph were the only violations observed (N.T. 8-11).

3. Inquiries by both the Bureau and Licensee to local police reveal that there have been no complaints about the licensed premises (N.T. 16-17).

4. Visitors to the licensed premises must pass through a set of glass doors into a vestibule, and from there through another set of glass doors into the premises. Once inside, the visitor is at the back of the stage on which bands perform, so that the performers are facing away from the street, towards the interior of the building (N.T. 21, 23-27).

5. The building in which the licensed premises does business was built by Licensee's husband to standards which were intended to contain the sound to the maximum extent possible (N.T. 23-27).

6. The area of the licensed premises is a mixed residential/commercial area. People do live in the neighborhood, but there are many residential and commercial vacancies. Nearby residents canvassed by Licensee have said they have no complaints (N.T. 28-32).

7. Licensee attempts at all times to keep the level of sound down so as to prevent it from escaping the building, including going outside to check (N.T. 32-33).

CONCLUSIONS OF LAW:

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on October 17, 2010, by permitting the use on the inside of the licensed premises of a loudspeaker, whereby music could be heard outside.

DISCUSSION:

Licensee made a good impression, persuading me that she attempts conscientiously to run the establishment in accordance with the law. The efforts of Licensee and her husband in the construction and management of the premises show a good faith effort to avoid problems.

However, the regulation involved in this case does not require proof that anyone was disturbed by hearing the loudspeakers (if someone had been disturbed, the Bureau might have filed the additional charge of operating the premises in a noisy and/or disorderly manner).

Licensee expressed some indignation that the Bureau's officers did not bring their observations to her attention, or at least to the local police. It is my opinion that nothing observed by the officers warranted a police call, and Bureau officers are entitled to remain undercover even if a regulatory violation has been observed.

Licensee was also concerned about an incident of May 8, 2010, in which Bureau officers conducted an open inspection for minors in the premises. As I pointed out during the hearing, this is something they routinely do at licensed premises which attract young people because of the entertainment provided. No minors were found, the Bureau needed no reason to choose this establishment for an open inspection, and it was not meant personally.

PRIOR RECORD:

Licensee has been licensed since July 6, 2007, and has had no prior violations.

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, Andrea M. Babarsky, t/a Thunder Road, License No. R-AP-SS-EHF-17691, shall pay a fine of one hundred dollars (\$100.00) 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 22ND day of JULY, 2011.



David L. Shenle, 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.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

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