

Mailing Date: MAY 17 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2699
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-419988
v.	:	
	:	LID - 55730
PORTABELLAS, INC.	:	
T/A PORTABELLAS	:	
2495 E. HARRISBURG PIKE	:	
MIDDLETOWN, PA 17057-3941	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-EHF-15770	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: FRANK C. SLUZIS, ESQUIRE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 30, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PORTABELLAS, INC., License Number R-AP-SS-EHF-15770 (hereinafter "Licensee").

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 October 21, November 6 and November 21, 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.

The investigation which gave rise to the citation began on September 19, 2010 and was completed on November 24, 2010; and notice of the violation was sent to Licensee by Certified Mail on December 14, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 7, 2012 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On October 21, 2010, an officer of the Bureau entered the licensed premises in an undercover capacity at 10:05 p.m. Upon entry, the officer observed two bartenders rendering service to 25 patrons. He also observed a DJ setting up to play (N.T. 11).

2. The DJ began to play music at 10:35 p.m. The music was amplified through loudspeakers (N.T. 12).

3. The officer departed the premises at 11:15 p.m. He conducted a sound check and could hear music emanating from the licensed premises at distances up to 240 feet (N.T. 12-13).

4. On November 6, 2010 the officer conducted another undercover visit to the licensed premises. He parked his vehicle at the rear of the establishment. Immediately upon exiting his vehicle he could hear music emanating from the licensed premises. He conducted a sound check and could hear music emanating from the licensed premises at distances up to 280 feet (N.T. 13-14).

5. The officer entered the licensed premises at 1:08 a.m. where he observed three bartenders rendering service to approximately 35 patrons (N.T. 14).

6. While inside the licensed premises the officer observed a disc jockey playing music that was amplified through loudspeakers (N.T. 14).

7. The officer departed the establishment at 1:45 a.m. (N.T. 14).

8. On November 21, 2010 the officer again visited the licensed premises at 12:05 a.m. He parked his vehicle at the rear of the premises where he could hear the sound of music and bass noise emanating from the premises. He conducted a sound check and could hear music emanating from the licensed premises at distances up to 270 feet (N.T. 15).

9. The officer entered the licensed premises at 12:10 a.m. He observed four bartenders rendering service to 50 patrons (N.T. 15).

10. The officer observed the DJ playing music for the entertainment of patrons. The music was amplified through loudspeakers (N.T. 15-16).

11. The officer departed the premises at 1:45 a.m. (N.T. 16).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The record establishes that, on the dates in question, a DJ played music on the licensed premises which was amplified through loudspeakers. On each date the amplified music could be heard outside of the licensed premises. This clearly establishes a violation of the regulation in question on all of the dates charged.

PRIOR RECORD:

Licensee has been licensed since June 20, 2007, and has had one prior violation:

Citation No. 10-1142. Fine \$150.00.

1. Permitted smoking in a public place where smoking was prohibited. December 10, 2009, January 13, 22, 23, February 27, March 8, April 5 and 6, 2010.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee PORTABELLA'S, INC., pay a fine of \$250.00 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.

Jurisdiction is retained.

Dated this 8TH day of May, 2012



Daniel T. Flaherty, Jr., J.

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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.

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.

Detach here and submit 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.** Make 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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Portabellas, Inc.