

Mailing Date: NOV 30 2011

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 11-0293
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W09-421334
 :
 v. :
 : LID - 58334
 :
FOSSILS LAST STAND, LLC :
429 RACE ST :
CATASAUQUA PA 18032-1111 :
 :
 :
LEHIGH COUNTY :
LICENSE NO. R-AP-SS-9313 :

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: Theodore J. Zeller, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 25, 2011. There are two counts in the citation.

The first count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on December 3, 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.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, on October 8, 16, 26, November 6, 7, 24, December 4 and 5, 2010, by operating the licensed establishment in a noisy and/or disorderly manner.

A hearing was held on October 7, 2011, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On December 3, 2010, a liquor enforcement officer arrived in the area of the licensed premises at about 9:40 p.m. He heard music on Race Street, directly in front of Licensee's

establishment, through the open window of his car. He parked and entered the premises at about 9:50 p.m. (N.T. 7).

2. There were about 20 patrons attended by two bartenders inside; there was no music playing when the officer entered. At about 10:00 p.m. a jukebox, equipped with loudspeakers, began to play songs. A sign in the premises read "Free Jukebox Tonight." (N.T. 8).

3. The officer left the premises at 10:05 p.m. and continued to hear the jukebox loudspeakers outside at distances as great as 250 feet (N.T. 9-10).

4. On November 24, 2010, an officer of the Catasauqua Police Department responded to the licensed premises at 10:59 p.m. on a complaint of loud music. On arrival the officer heard music emanating from the premises, and entered to see that a live band was performing. He asked the person in charge to turn down the volume, and this was done (N.T. 14-15).

5. On October 8, 2010, a different officer of the Catasauqua Police Department responded to the licensed premises at 11:20 p.m. on a complaint of loud music. On arrival the officer heard music emanating from the premises, and entered to see that a live band was performing. He asked the bartender to turn down the volume, and this was done (N.T. 21-23).

6. The person who complained about the loud music on October 8, 2010, is a close neighbor of the licensed premises, who heard the music inside his home (N.T. 26-27).

7. On October 16, 2010, the same neighbor made the same complaint at 10:15 p.m. The source of the music was a live band, and the volume was lowered somewhat after the police arrived, although it was still audible inside the neighbor's house (N.T. 27-28).

8. The neighbor heard jukebox music through the open side windows of the licensed premises at 10:20 p.m. on October 26, 2010 (N.T. 28).

9. On Saturday, November 6, 2010, the neighbor left his home for the evening to get away from the disturbance caused by loud, live music in the licensed premises (N.T. 29).

10. On November 24, 2010, the neighbor returned to his home at 10:50 p.m. and heard live music emanating from the licensed premises (N.T. 30).

11. On December 4, 2010, the neighbor heard Licensee's jukebox, inside his home, at 9:40 p.m. After police responded he again heard Licensee's music, after midnight (N.T. 31).

12. Licensee purchased the premises on June 13, 2007. At the time the main entrance was seven steps up from a parking lot, with the steps protected by a roof and side walls, but without a wall between the steps and the parking lot. As a result, sound could escape from the premises whenever someone opened the door at the head of the stairs. Licensee constructed a wall with a door between the stairs and the parking lot, making a vestibule (N.T. 54-56, Ex. L-1, 3, and 4).

13. The side of the building facing the alleyway between the licensed premises and the residence of the neighbor who complained was not insulated when Licensee acquired the premises, so it was reconstructed with insulation and new siding (N.T. 57-58, Ex. L-2).

14. The windows of the licensed premises were ordinary glass, with café curtains, but Licensee caused sound-deadening baffles to be constructed to fit the windows at times when entertainment is being provided (N.T. 58, Ex. L-6 and 7).

CONCLUSIONS OF LAW:

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on December 3, 2010, by permitting the use on the inside of the licensed premises of a loudspeaker, whereby music could be heard outside.

Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, on October 8, 16, 26, November 6, 24, December 4 and 5, 2010, by operating the licensed establishment in a noisy manner.

DISCUSSION:

The dates for which I have sustained the second count are the dates on which the neighbor testified to being disturbed inside his home by music emanating from the licensed premises. I do not conclude that the premises was operated in a disorderly manner, merely that it was noisy and the noise disturbed a neighbor. The Crimes Code is not involved in this case

Some of the testimony speculated about a deterioration in the relationship with the complaining neighbor which might have motivated him to make complaints. I do not find that the making of repeated complaints in this case was vindictive in any respect. I believe the complaints were made in good faith, for the purpose of obtaining peace.

Whatever may have been his motivation (it is irrelevant), Licensee's neighbor and the rest of the community are entitled to quiet in their homes. We have ample confirmation from law enforcement and Bureau personnel that the neighbor had good reason to complain.

I acknowledge Licensee's efforts to contain the sound, and I hope that they prove effective.

PRIOR RECORD:

Licensee has been licensed since May 25, 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. The two counts are merged for penalty purposes.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Fossils Last Stand, LLC, License No. R-AP-SS-9313, shall pay a fine of three hundred dollars (\$300.00) 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 18TH day of November, 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.

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