

Mailing Date: MAR 14 2012

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 11-0312
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W09-421832
 :
 v. :
 : LID - 15208
 :
 MARVIS LEAF T/A FRANK'S PLACE :
 400 S 7th ST :
 READING PA 19602-2413 :
 :
 BERKS COUNTY :
 LICENSE NO. R-AP-SS-11873 :

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: Michael D. Dautrich, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 11, 2001. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on January 30, 2011, 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 Friday, February 3, 2012, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

On January 30, 2011, a liquor enforcement officer arrived in the area of the licensed premises at 12:45 a.m. and heard music emanating from it at distances as great as 120 feet. He entered the premises and found that the source of the music was three loudspeakers inside, being used by a disc jockey playing rap music (N.T. 6-8).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since October 15, 1975, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

Citation No. 89-1772. \$250.00 fine.

1. Sold, furnished or gave liquor for consumption off premises.

Citation No. 91-1138. \$250.00 fine and 1 day suspension with thereafter conditions.

1. Not a *bona fide* restaurant (insufficient food and chairs at tables).

Citation No. 99-0170. \$800.00 fine and 1 day suspension with conditions.

1. Gambling (number bets).
2. Unlawfully possessed liquor obtained from a source other than a PA state store.
3. Not a *bona fide* restaurant in that chairs at tables were insufficient.

Citation No. 07-1975. \$1,250.00 fine.

1. Sales on Sunday after 2:00 a.m. July 29, 2007.

Citation No. 07-3009C. \$1,500.00 fine and R.A.M.P. – certification mandated.

1. Sales to a minor. November 15, 2007.

Citation No. 08-1786. \$600.00 fine.

1. Permitted patrons to possess alcoholic beverages after 2:30 a.m. June 21, 2008.
2. Failed to require patrons to vacate the premises by the required time. June 31, 2008.

Citation No. 08-2788. \$650.00 fine.

1. Failed to require patrons to vacate the premises by the required time. October 25, 2008.

Citation No. 09-0738. \$1,600.00 fine.

1. Loudspeaker could be heard outside.
November 21, 22, 2008; January 4 and February 14, 2009.
2. Failed to require patrons to vacate the premises by the required time.
October 19, 2008 and January 4, 2009.
3. Permitted smoking in a public place where smoking was prohibited.
November 21, 22, December 18, 2008; January 4 and February 14, 2009.
4. Failed to post signs required by the Clean Indoor Air Act.
November 21, 22, December 18, 2008; January 4 and February 14, 2009.

Citation No. 10-1711C. \$1,000.00 fine and 1 day suspension.

1. Sales to a minor. July 23, 2010.

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.

This penalty is more lenient than the penalty for the same violation on four dates in late 2008 and early 2009 for two reasons. First, in this case the investigating officer visited the premises three times before January 30, 2011, without finding a violation. Secondly, Licensee's manager credibly testified in this case that care is taken, by making frequent outside visits, to see that music does not escape the licensed premises.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Marvis Leaf, t/a Frank's Place, License No. R-AP-SS-11873, 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 2ND day of MARCH, 2012.



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

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