

Mailing Date: SEP 11 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 11-0658
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W02-427728
	:	
v.	:	
	:	
	:	LID - 60688
523 LINDEN TAVERN, INC.	:	
523 LINDEN ST.	:	PLCB LICENSE NO. R-AP-SS-3683
SCRANTON, PA 18503-1605	:	

ADJUDICATION

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: ANTHONY J. PIAZZA, III, ESQUIRE**

BACKGROUND:

This proceeding arises out of a citation that was issued on April 18, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 523 LINDEN TAVERN, INC., License Number R-AP-SS-3683 (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 March 12, 2011, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside or outside 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 March 12, 2011 and was completed on March 12, 2011; and notice of the violation was sent to Licensee by Certified Mail on March 28, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 25, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania. The hearing was bifurcated and completed on February 15, 2012.

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 March 12, 2011 at 5:35 p.m., an officer of the Bureau arrived outside of the licensed premises at the rear most gate (N.T. 11-12).

2. At that time the officer could hear a substantial amount of music that seemed to be coming from directly beyond the fence around the licensed premises. The officer then conducted a sound check and could hear the music, which he heard at the rear gate to the licensed premises, at distances up to 260 feet away (N.T. 12).

3. After conducting the sound check, the officer returned to where he first heard the music and could still hear music coming from what appeared to be the licensed premises. He then went around to the front door of the licensed premises, paid a \$5.00 cover charge to the doorman and, went inside and proceeded all the way through the front area of the licensed premises back to the tented area (N.T. 13-14).

4. Upon entering the tented area, the officer observed a five-piece band, including three guitars, a drummer and a keyboard player. The officer noted that the members of the band were singing into electronically amplified microphones with cords hanging from them. He also observed multiple loudspeakers which were amplifying the music being played by the band (N.T. 14).

5. After observing the band playing music through loudspeakers on the licensed premises, the officer exited the licensed premises and went around to the back area where he first heard the music. At that point he heard the same rock and roll music that he had heard inside the licensed premises, and was specifically able to hear the band playing the same song that had been playing inside when he left (N.T. 14-15).

CONCLUSION OF LAW:

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

DISCUSSION:

The testimony of the investigating officer, which I find to be clear and convincing, established that the officer heard rock and roll music being played while he stood outside of the rear of the licensed premises. He then entered the licensed premises where he found a band was playing music which was amplified through loudspeakers. He then exited the licensed premises and returned to the spot where he had first heard the music and heard the same music being played. He even heard the same song that he heard playing as he exited the licensed premises. There can, therefore, be no doubt that the music he heard being amplified through loudspeakers was coming from the licensed premises.

Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] reads as follows:

“(a) A licensee may not use or permit to be used inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof can be heard on the outside of the licensed premises.”

It is clear that the facts as established by the officer establish a violation of this Regulation. Consequently, I conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since October 31, 2008, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 523 LINDEN TAVERN, 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 5TH day of September, 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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523 LINDEN TAVERN, INC.