

Mailing Date: DEC 20 2011

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 11-1180
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-428737
 :
 v. :
 : LID - 61469
 :
 PICO 1500 LLC :
 1500 SOUTH ST :
 PHILADELPHIA PA 19146-1636 :
 :
 PHILADELPHIA COUNTY :
 LICENSE NO. R-AP-SS-OPS-4848 :

JUDGE SHENKLE
BLCE COUNSEL: James E. Dailey, Esq.
LICENSEE: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 5, 2011. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on April 25, 26, May 5, 6, 13 through 15, 20 through 25, 27 through 30 and June 1, 2011, by permitting the use on the inside or outside 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.

At the hearing scheduled for November 1, 2011, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period March 31 through June 10, 2011, and sent it written notice of the results on June 17, 2011 (N.T. 10-11, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on July 5, 2011 (N.T. 10-11, Ex. B-2).
3. A Notice of Hearing was mailed to Licensee on September 19, 2011.

4. On April 25, 2011, a person who lives near the licensed premises heard music emanating from it between 5:00 p.m. and 1:00 a.m. the next day (N.T. 17, Ex. B-4).
5. This happened again on May 5-6, 2011 (N.T. 18, Ex. B-4).
6. This happened again on May 13-15, 2011 (N.T. 19, Ex. B-4).
7. This happened again each day from May 20 through 25, 2011 (N.T. 19-21, Ex. B-4).
8. This happened again each day from May 27 through June 1, 2011 (N.T. 21-22, Ex. B-4).
9. The source of the music on each occasion was a boom box set up in Licensee's outside serving area (N.T. 23-26, Ex. B-4).

CONCLUSIONS OF LAW:

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on April 25, 26, May 5, 6, 13 through 15, 20 through 25, 27 through 30 and June 1, 2011, by permitting the use on the outside of the licensed premises of a loudspeaker, whereby music could be heard outside.

DISCUSSION:

This licensed premises includes an outside serving area, where it is lawful for Licensee to serve alcoholic beverages to patrons in this area.

However, the license does not authorize the use of a loudspeaker in such a way that it can be heard elsewhere than on the licensed premises.

Licensee is advised to relocate or remove the boom box. Any repetition of this violation will necessarily have harsher consequences.

PRIOR RECORD:

Licensee has been licensed since January 14, 2010, 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, Pico 1500, LLC, License No. R-AP-SS-OPS-4848, 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 12TH day of December, 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