

Mailing Date: JAN 12 2012

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : Citation No. 11-1344  
LIQUOR CONTROL ENFORCEMENT :  
 : Incident No. W01-429163  
v. :  
 : LID - 46817  
MIRIAM'S KIDS INC :  
1<sup>st</sup> FL & BSMT :  
451-455 N 3<sup>rd</sup> ST :  
PHILADELPHIA PA 19123-4109 :  
 :  
PHILADELPHIA COUNTY :  
LICENSE NO. R-AP-SS-EHF-11539 :

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE COUNSEL: Edward B. McHugh, Esq.

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 2, 2011. The citation alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on May 12 and June 9, 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 Tuesday, November 15, 2011, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

**FINDINGS OF FACT:**

1. On May 12, 2011, liquor enforcement officers heard music emanating from the licensed premises at a distance of approximately 30 feet. They went inside and saw that the source of the music they had heard outside was a DJ using loudspeakers throughout the premises (N.T. 8).

2. On June 9, 2011, liquor enforcement officers heard music emanating from the licensed premises at a distance of approximately 30 feet. They went inside and saw that the source of the music they had heard outside was a DJ using loudspeakers throughout the premises (N.T. 9-10).

**CONCLUSIONS OF LAW:**

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on May 12 and June 9, 2011, by permitting the use on the inside of the licensed premises of a loudspeaker whereby music could be heard outside.

DISCUSSION:

Licensee's counsel cross-examined the Bureau's witness thoroughly, and this resulted in the witness' assertion that each of his paces or strides is equal to one foot. As the witness is a normally sized person there is no way this can be true.

However, this did not prevent me from concluding that the music was heard outside the licensed premises and its source was a loudspeaker inside. I do not think the witness could have failed to distinguish between this licensed premises and the separate drinking establishment next door, particularly when he has entered the premises he is investigating and hears the same music.

PRIOR RECORD:

Licensee has been licensed since January 3, 2001, and has had prior violations as follows:

Citation No. 02-0569. \$1,600.00 fine.

1. Sales to minors. March 6, 2002.
2. Served unlimited alcoholic beverages for a fixed price. February 27 and March 6, 2002.

Citation No. 02-1626. \$300.00 fine.

1. Served unlimited alcoholic beverages for a fixed price. July 25, 2002.

Citation No. 05-1178. \$100.00 fine.

1. Bad checks for malt or brewed beverages. March 29 and April 12, 2005.

Citation No. 05-2079. \$500.00 fine.

1. Bad checks for malt or brewed beverages. June 28 and July 20, 2005.

Citation Nos. 05-2495 & 05-2722 (consolidated). \$550.00 fine.

1. Bad checks for malt or brewed beverages. September 7 and October 4, 2005.

Citation No. 06-0255. \$1,000.00 fine.

1. Served unlimited alcoholic beverages for a fixed price. December 18, 2005.

Citation No. 06-1697. \$5,300.00 fine.

1. Loudspeakers could be heard outside. May 25, 2006.
2. Sex discrimination. May 25 and June 8, 2006.
3. Discounting in excess of 2 hours in a business day. May 25, June 8 and 14, 2006.
4. Unlimited free alcoholic beverages for three hours. May 25 and June 8, 2006.
5. Sold two drinks for the price of one. June 14, 2006.
6. Unlimited alcoholic beverages for a fixed price. June 14, 2006.

Citation No. 06-2885. \$750.00 fine.

1. Served unlimited alcoholic beverages for a fixed price. October 6, 2006.

Citation No. 07-0344. \$500.00 fine and 1 day suspension.

1. Failed to post notice of suspension. January 22, 2007.
2. Posted notice of closure for reason other than suspension. January 22, 2007.

Citation No. 09-2478. \$250.00 fine.

1. Loudspeakers could be heard outside. September 18, 2009.

Citation No. 10-2429. \$400.00 fine.

1. Loudspeakers could be heard outside. October 9, 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.

In reviewing the facts found in Licensee's two most recent loudspeaker violations I conclude that the violation in this case was neither as loud nor as disturbing to the public as those violations were, and therefore warrants a lesser penalty.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Miriam's Kids, Inc., License No. R-AP-SS-EHF-11539, shall pay a fine of two hundred fifty dollars (\$250.00) 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 5<sup>TH</sup> day of January, 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

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**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