

The citation charges Licensee with violations of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that Licensee, by your servants, agents, or employees, used, or permitted to be used on the inside or outside of your licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside, on July 1, 16 and 17, 2011.

I presided at an evidentiary hearing on January 25, 2012 at 100 Lackawanna Avenue, Scranton, Pennsylvania. I heard this citation along with three others, involving the same Licensee and docketed at 10-1268, 11-1755 and 11-1864.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on June 28, 2011 and completed it on July 17, 2011. (N.T. 28-29)
2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested on, July 25, 2011. The notice alleged the violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 29-30)
3. On July 1, 2011, a Bureau Enforcement Officer entered the premises in an undercover capacity at approximately 9:25 p.m. A patron deposited money into a compact disc juke box. The Officer departed the premises at 10:00 p.m. He heard the music emanating from the juke box as far away as 200 feet from the premises. The front door was closed. (N.T. 36-41)
4. A Officer returned to the premises on July 16, 2011, arriving at 10:45 p.m. As soon as he exited his vehicle, the Officer heard amplified music escaping the premises. As he approached the licensed premises the music grew louder. He heard the music as far away as 250 feet from the premises. The Officer entered the premises at 11:00 p.m., noting that the source of the music was the coin operated compact disc player. (N.T. 42-45)
5. The Officer departed the premises after midnight, July 17, 2011 and again heard the amplified music emanating from the premises. When the Officer departed the premises, the front door was propped open. The Officer also noticed a loudspeaker that was placed in the door frame facing outward, through which the music was amplified. On July 17, 2011, at 12:20 a.m., the Officer heard the amplified music approximately 460 feet away from the premises. (N.T. 47-50)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The violations are sustained as charged.

ADJUDICATION HISTORY:

Licensee has been licensed since June 6, 2008, and has the following Adjudication history:

Docket No. 09-1446. Fine \$500.00.

Possessed or operated gambling devices or permitted gambling on your licensed premises (machine) on May 14 and 15, 2009.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

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 the violation found herein.

Discretionary Component(s)

Mr. Rogers claims he tried to ameliorate the problem by soundproofing the rear of the premises. I responded by saying that his “trying” was marginal; based on the manner in which Licensee was operating, I concluded Mr. Rogers really had very little concern about the community. This conclusion was buttressed by Licensee’s allowing the front door to be open. Licensee also permitted a loudspeaker to be mounted on that propped open, front door.

I impose a \$500 fine and a seven days Amusement Permit suspension.

ORDER:

Imposition of Fine

Licensee must pay a \$500.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Imposition of Suspension

I suspend the Amusement Permit (AP) for seven days, beginning Monday, June 11, 2012, 7:00 a.m., and ending Monday, June 18, 2012, 7:00 a.m. Assuming Licensee has complied with the Adjudication, (Docket No. 10-1268), regarding placing a label over the AP portion of the license, Licensee must continue to have the AP portion of the license covered for the duration of this suspension, and those I imposed in the companion Adjudications (Docket Nos. 11-1755 and 11-1864).

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 30TH day of March, 2012.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.

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.** 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