

Mailing Date: JUNE 28 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 11-1543
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W05-432760
v.	:	
	:	
SEVEN MOUNTAINS WINE CELLARS, LLC	:	PLCB LID No.: 60953
107 MOUNTAIN SPRING LANE	:	
SPRING MILLS, PA 16875-9041	:	
	:	PLCB License No.: LK-273

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Nadia L. Vargo, Esquire

FOR LICENSEE: John A. Torrente, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on September 9, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Seven Mountains Wine Cellars, LLC (Licensee).

The citation charges Licensee with a violation 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/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, 2011.

I presided at an evidentiary hearing on April 13, 2012 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on June 22, 2011 and completed it on July 20, 2011. (N.T. 28)
2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on, August 5, 2011. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 29)
3. On July 1, 2011, two Bureau Enforcement Officers arrived in the area of the premises at 8:00 p.m. Upon exiting his vehicle, one Officer immediately heard amplified music coming from a yet to be determined area. Later in the evening, one Officer conducted a sound check. He heard the amplified music coming from the stage as far away as 220 feet. (N.T. 32; 63-64)
4. Both Officers approached the establishment. They determined the music was coming from a band playing on a stage, located behind the licensed premises in an unlicensed open area. The band employed an electronic amplification system. (Commonwealth Exhibit No. C-5, N.T. 33; N.T. 50-54)
5. Both Officers entered the premises in an undercover capacity through the front door. They exited the premises through the rear door which leads to a patio. From that position, the Officers saw the stage. (N.T. 49)
6. The band, Poe Valley Troubadours, provided entertainment on the stage. There were approximately 100 people scattered throughout the patio and unlicensed area, sitting on the ground or on lawn chairs. Some people exited the licensed premises through the door leading to the patio. They either sat on the patio or on the open area listening to the entertainment. Behind the performers on the back wall of the stage there was a white banner posted with the Seven Mountains Winery logo on it. (Commonwealth Exhibit No. C-4, N.T. 60)
7. Some of the people came from the licensed premises with glasses of wine that were served inside the licensed premises. The glasses had the Seven Mountains Winery logo imprinted on them. (N.T. 61-62)

8. There was a table situated approximately thirty to forty feet away from the stage. Several people were selling wine glasses there. The wine glasses had the Seven Mountains Winery logo imprinted on them. (N.T. 92-93)

9. Maryann Bubb, Licensee's Manager, arranged to have the live band perform that day. (N.T. 102-103)

10. Scott and Maryann Bubb, husband and wife, and Licensee's Sole Members, live on property adjacent to the licensed premises. They own the property, as husband and wife, upon which the licensed premises is located. They lease the premises to the licensed corporation. The stage is located on property owned by Mr. and Mrs. Bubb. The power source for the electronic amplification originated in Mr. and Mrs. Bubb's home. (Commonwealth Exhibit No. L-1, N.T. 160-163; 169-171)

CONCLUSIONS OF LAW:

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

DISCUSSION¹:

It has been some time since I heard a case presented by both sides in such a convoluted and unnecessarily complicated manner, especially since there was no significant factual dispute. Additionally exasperating was the threshold investigation the Bureau conducted.

In this matter the Bureau conducted a nine minutes investigation. The opportunity to review Licensee's records regarding the event, to the extent any exist, was not employed. I well recognize the financial hardship the Commonwealth is attempting to weather. The resulting depletion of resources surely comprises the Commonwealth's ability to police many areas of the law. Nonetheless, I am not one who would allocate resources so thinly as to compromise quality because doing so actually depletes more resources. I would prefer to do thirty investigations thoroughly than ninety-nine superficially.

¹ This Adjudication is a companion to Adjudication, In Re Citation No.: 11-2004, charging Licensee with the same violation. The two matters were heard together with the understanding the testimony in one would be applied to the other.

As a Limited Winery, Licensee's privileges and obligations are governed by Article V of the Liquor Code. For the most part, the pertinent regulation has been applied to Article IV licensees. In pertinent part, the subject regulation provides:

§5.32. Restrictions/exceptions

- (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.... can be heard on the outside of the licensed premises. (emphases mine)

The above excerpt is part of Title 40 Pa. Code, referred to Subchapter C, relating to amusement and entertainment. Subchapter C supplements the Liquor Code in the Amusement Permit which is limited to Article IV licensees. Consequently, there is some argument to be made that all of Subchapter C was intended to be limited to Article IV licensees.

If I accepted that position, Limited Wineries would be free to disturb the community without sanction through this administrative process. Furthermore, the pertinent regulation employs the broadest identifiers as the unmodified term, "licensee" appears. Indeed, subsections (a), (b), and (c) of 40 Pa. Code §5.32, refer to "a licensee." In contrast, subsection (d) is more precise as it refers to specific licensees.

This distinction is sufficient to brush aside any argument limited to the scope of subsection (a). When considered in consort with Liquor Code Section 104(a) [47 P.S. §1-104(a)], which commands liberal Liquor Code construction and, by necessary implication, Title 40 Pa. Code, to protect the public welfare, health, peace, and morals of the people of the Commonwealth, the inevitable result is the utter failure of Licensee's argument.²

Licensee also suggests the regulation cannot apply as it was not Licensee who provided the entertainment. The evidence however, indicates otherwise. Here, we have a husband and wife who are Licensee's Sole Partners. The personal component (husband and wife) has been so intertwined with the business component (Licensee) that distinguishing between the two is impossible.

² As remedial civil legislation, the Liquor Code is to be liberally construed to effect its purpose. **Tony Savatt, Inc. v. Latrobe Brewing Co.**, 583 A.2d 796 (Pa.Super. 1990)

If Licensee wishes to protect itself from liability based on a legally recognized distinction, Licensee must abide by the law establishing these distinctions. Licensee cannot operate in such a desultory manner that blurs the line between what is personal and business. Our legal system responds to individuals who disregard a legally recognized method of doing business by employing the doctrine of Piercing The Corporate Veil.³

PRIOR RECORD:

Licensee has been licensed since January 14, 2009 and has the following Adjudication history:

In Re Citation No.: 10-2450. Fine \$300.00.

Used loudspeakers or devices whereby the sound of music could be heard outside on October 10, 2010.

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)

I impose a \$500.00 fine.

ORDER:

In Re Citation No.: 11-1543; Licensee, Seven Mountains Wine Cellars, LLC;
PLCB LID No.: 60953; PLCB License No.: LK-273

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.

³ See **BLCE v. Tussey Food Services, Inc.**, In Re Citation No.: 94-2245, Vol. 22 Sel.Op.ALJ, page 156 for a remarkably similar pattern.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 22ND day of June, 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