

Mailing Date: JUNE 20 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-1609
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-435028
	:	
PATS 3517 INC.	:	
3517 COTTMAN AVE.	:	LID - 58158
PHILADELPHIA PA 19149-1607	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-7536	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 20, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Pats 3517, Inc., License Number R-AP-SS-7536 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, January 26, 2012, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

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 August 11, 2011, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside 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.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began and ended on August 11, 2011. A notice of violation letter dated August 22, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was returned unclaimed on September 20, 2011. The citation was re-mailed by certified mail on November 17, 2011 and was signed as received on November 19, 2011. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on December 15, 2011 notifying the Licensee of the January 26, 2012 hearing. That certified mailing was signed as received (N.T. 12-13 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement visited the licensed premises on August 11, 2011 at approximately 11:25 p.m. While driving to another assignment in the area, the officer came to a traffic stop. His windows were down. He passed the licensed premises and heard loud music coming out of the bar. He looked to his left and, through a plate glass window, saw a live band playing inside the premises. At that point, he was directly across from the licensed establishment but subsequently parked his vehicle up the street (N.T. 5-6).

3. The officer parked the vehicle about 75 feet from the premises. He could still hear the sound of music coming from the bar. He walked up to the bar and could see speakers through the window. He determined that it was amplified music. As he walked towards the premises, the music grew louder. He did not enter the premises, but stood directly outside at the intersection of Frankford and Cottman Avenues (N.T. 7-8).

4. The premises was open and operating (N.T. 8).

5. The officer saw speakers, two feet by three feet, mounted on pedestals putting them approximately five feet in the air, and facing the bar (N.T. 8).

6. The officer saw approximately thirty patrons inside. He noted that there were bartenders serving mixed drinks and bottled beer and people consuming alcoholic beverages (N.T. 9).

7. The officer saw four members of the band and two loudspeakers positioned on either side of the band and towards the bar (N.T. 10).

8. When the officer departed the premises, he walked up to his car, which was approximately thirty five feet away and he could still hear the sound of music. He remained in the area for approximately twenty minutes (N.T. 11).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On August 11, 2011, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a).

PRIOR RECORD:

Licensee has been licensed since December 27, 2007, and has a record of prior violations as follows:

Citation No. 08-1618. \$1,550.00 and R.A.M.P. training mandated.

1. Sales to minors.
May 15, 2008.
2. Minors frequenting.
May 15, 2008.
3. Operated the licensed establishment without a valid health permit or license.
May 1, 15 and June 12, 2008.

Citation No. 09-2253. \$1,750.00 and R.A.M.P. training mandated.

1. Used loudspeakers or devices whereby music could be heard outside.
March 14, 2009.
2. Sales to a minor.
April 24 and 25, 2009.

Citation No. 10-0477. \$500.00 and R.A.M.P. training mandated.

1. Used loudspeakers or devices whereby music could be heard outside.
January 14, 2010.
2. Engaged in unlawful discrimination in that Licensee provided alcoholic beverages to female patrons at a reduced price while charging full price to male patrons.
January 27, 2010.

Pats 3517, Inc.
Citation No. 11-1609

Citation No. 10-0694. \$500.00 fine.

1. Failed to comply with the Order of the Administrative Law Judge mandating R.A.M.P. training.
May 11, 2009 through March 16, 2010.
2. Failed to maintain complete and truthful records covering the operation of the license business for a period of two years.
February 23, 2010.

DISCUSSION:

The officer testified that while traveling to an assignment, he heard loud music coming from the licensed premises and stopped to investigate. He noted that there was a live band playing through amplified speakers inside the premises. The premises was open and operating at the time. The officer could hear the music on the public street up to a distance of 75 feet away from the premises.

The Licensee has a lengthy history, which includes previous violations regarding loudspeakers. Under the circumstances, a \$600.00 monetary penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

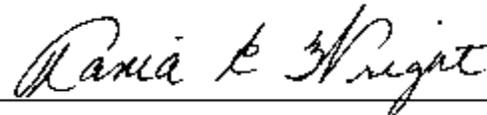
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Pats 3517, Inc., License Number R-AP-SS-7536, pay a fine of Six Hundred Dollars (\$600.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

Jurisdiction of this matter is retained.

Dated this 8TH day of JUNE, 2012.



Tania E. Wright, J.

Pats 3517, Inc.
Citation No. 11-1609

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE 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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

mm

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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Citation No. 11-1609
Pats 3517, Inc.