

Mailing Date: JUNE 08 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-1625
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-429453
v.	:	
	:	LID - 39269
DELAWARE COUNTY LAGOON INC	:	
TAYLOR AVE & DELAWARE RIVER	:	
ESSINGTON PA 19029-1230	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. H-AP-SS-EHF-88	:	

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 20, 2011. There are two counts in the citation.

The first count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on May 21, 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.

The second count alleges that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on July 2, 2011, by failing to adhere to the conditions of an agreement with the Board placing additional restrictions on the license.

A hearing was held on February 7, 2011, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. The official records of the Board contain a conditional licensing agreement (the "CLA") signed by Licensee ("Lagoon") on February 2, 2011, and by the Board's Chief Counsel on February 8, 2011. In pertinent part, the agreement provides in paragraph 6 as follows:

....

c. During the period between March 15 and November 15, Lagoon shall employ a minimum of fifteen (15) security personnel who will be present and working from 7:00 p.m. to 2:30 a.m. on all days that the licensed premises is open for business. The security personnel shall monitor and maintain order in the interior of the licensed premises. Such security personnel shall be clothed to make their status as security apparent.

....

e. During the period between March 15 and November 15, Lagoon shall also employ a minimum of three (3) additional security personnel who will be present and working from 7 p.m. to 2:30 a.m. on all days that the licensed premises is open for business. The security personnel shall monitor and maintain order in the exterior of the licensed premises including the outside deck and parking lot. Such security personnel shall be clothed to make their status as security apparent. Security personnel shall patrol the entire parking area at least once per hour;

....

(N.T. 6-7, Exhibit B-3).

2. A liquor enforcement officer visited the licensed premises at 10:00 p.m. on Saturday, May 7, 2011. Two employees outside directed him where to park his vehicle. At the entrance he was greeted by two to three doormen, who “wanded” the officer as a check for weapons. He then paid a fee and entered the premises. There were patrons in both the bar area and the deck area, but the officer did not observe security personnel. Due to the number of patrons and the possibility that he was counting a security guard twice, the officer did not feel that Licensee was violating the CLA because he wasn’t able to count how many security people there were. He observed no other violations (N.T. 7-8).

3. On May 21, 2011, the officer arrived at the premises at 1:40 a.m. As he parked his vehicle he did not see any employees in the parking lot. If one looks directly at the establishment, one sees the Delaware River directly behind it. To the left there is a large area (on land) filled with boats. To the right is Governor Printz Park. The area shown by Google Maps as “Taylor Ave” was described by the officer as “really more of a parking lot.” Online aerial views of the property confirm that Taylor Avenue is not separated from Licensee’s parking area, and the other side of it is tree-lined. The officer parked his vehicle there, about 400 feet from the entrance to the premises. At that location he heard music emanating from Licensee’s premises (N.T. 9-10).

4. The music became louder as the officer approached the licensed premises. Doormen at the entrance refused his request to enter, as they were closed or about to be closed. The officer walked through the parking lot, past his vehicle, and across the street into a residential area, about 500 feet from Licensee’s building. At that location he could still hear the bass beat of dance/hip-hop music coming from the licensed premises (N.T. 10-11).

5. The officer returned to his vehicle and maintained surveillance, but did not observe any other violations. He saw a group of security personnel leave the premises at 2:20 a.m., but they were too far away for him to count how many of them there were, and there could have been others who had not left, so the officer still did not believe a violation of the CLA had been observed. He

left the area at 2:25 a.m. The officer figured that once he had completed an inspection and reviewed Licensee's records, he would be able to determine how many security personnel there were on both May 7 and May 21, 2011 (N.T. 11).

6. On May 29, 2011, the officer walked through the premises to the outside deck area. He did not see any security personnel, nor did he hear any music. Again, the officer was not confident of a violation of the CLA, wanting to see Licensee's records first (N.T. 12).

7. On at least one occasion during this investigation the officer observed several large loudspeakers in the licensed premises, both inside the building and in the deck area. On July 2, 2011, another liquor enforcement officer saw four large loudspeakers in each of two areas: the indoor stage area and the outdoor deck (N.T. 12-13, 47-48).

8. Liquor enforcement officers conducted a routine inspection of the licensed premises, beginning at 8:15 p.m. on July 2, 2011. There were traffic controllers and security personnel outside the establishment. After one of the officers identified himself to security personnel at the door, he was referred to Licensee's president. The officer asked about security personnel on May 7, 21, 29, and July 2, 2011; Licensee's president said he believed they were adequately supplied. When the officer returned at a later date, the president was able to supply employee records and a payroll sheet. Based on the paperwork provided, the officer did not allege violations for May 7, 21, and 29, 2011 (N.T. 15-17).

9. At some time during the visit of July 2, the officer counted nine security personnel inside and three outside, a total of 12. The officer was satisfied that all other aspects of the CLA were being observed. There were no more than 25 patrons in the premises at the time of the inspection, in a place that could easily hold 200. The nine inside security personnel appeared to the officer to be just beginning their work; at the time he saw them they were all together. The officer did not inspect all of the areas of the licensed premises where security personnel might have been; he believed that if there had been additional personnel, the person whom he understood to be in charge of security would have told him that (N.T. 18-20, 24-34).

10. Licensee's president stated to the officer on July 2, 2011, that their sound system had been in the premises for about seven years (N.T. 21).

11. The licensed premises is situated on nine acres on which there are a restaurant, a banquet facility, a night club, more than 100 hotel rooms, a boat yard, a marina, and some office space. The parking lot will hold 750 vehicles. The three outside security personnel mentioned in paragraph 6c of the CLA are deployed in the parking area to ensure order in the process of parking and moving people into the service areas (N.T. 49-50).

12. The fifteen security personnel mentioned in paragraph 6c of the CLA are deployed mainly in the indoor club area and the outdoor deck, but they also patrol the marina, the hotel corridors, and respond to any portion of the premises where they may be needed. The individual whom the officer believed to be in charge of security on July 2, 2011, was in fact just a doorman. Most of the security personnel working at the premises are employees of Confidential Security, whose supervisor is a different person. In addition, Licensee's president and three other employees of the licensed corporation perform security functions in the premises. They are distinguished by collared shirts embroidered with Licensee's trade name and logo. The outside security personnel, employees of the security company, also wear shirts identifying them as security (N.T. 50-52, 66).

13. Licensee's business records include a department summary by check date. For the paychecks issued on July 15, 2011, twenty-four employees of the security company were paid for work during the period June 27 through July 11, 2011. In all, they were paid \$7,230.08 for 431.25 hours of work during this period, at an average wage of \$16.77 (the most highly paid received \$17.50; the lowest, \$13) (N.T. 53-57, Exhibit L-1).

CONCLUSIONS OF LAW:

Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on May 21, 2011, by permitting the use on the inside of the licensed premises of a loudspeaker, whereby music could be heard outside.

The Bureau's evidence did not prove that Licensee violated §404 of the Liquor Code, 47 P.S. §4-404, on July 2, 2011, by failing to adhere to the conditions of a Conditional Licensing Agreement between Licensee and the Board which placed additional restrictions on the license.

DISCUSSION:

The CLA between Licensee and the Board in this case is a challenging document to enforce, because the extensive area occupied by Licensee's business makes it difficult for an undercover investigator to be sure he has seen all of the security personnel on duty at a particular time.

The direct evidence of the officer's observations on July 2, 2011, is not sufficient to support the second count of the citation, because there are so many places security personnel might have been during the inspection that it is possible the officer missed some. The investigating officer was apparently not in a position to order the security personnel to "fall in" and "count off."

Licensee presented evidence in the form of computer-generated statements which show that 24 named people were compensated for a total of 431.25 hours during the period June 27 through July 11, 2011. This was not a sufficient number of hours to cover the CLA's full requirements during that period (18 persons times 7.5 hours times 14 days equals 1890 person-hours required), but the data provided does not allow one to focus on a single date.

The citation, however, charges only a single date, July 2, 2011. On this evidence it is possible the security detail was at full strength on that one day, though Licensee's records show there may have been shortages on other days. By assuming (in drafting the citation) the burden to prove a violation on one particular date, as contrasted with a longer period of time which might have been verified through employment records, the Bureau handicapped this investigation. As a result, the evidence did not prove a violation on July 2, 2011.

PRIOR RECORD:

Licensee has been licensed since June 4, 1997, and has had prior violations as follows:

Citation No. 01-1106. \$100.00 fine.

1. Purchased malt or brewed beverages on credit.

Citation No. 11-0608. \$300.00 fine.

1. Unlimited alcoholic beverages for a fixed price. February 12, 2011.

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. Penalties are assessed as follows:

Count 1 – a fine of \$200.00.

Count 2 – DISMISSED.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Delaware County Lagoon, Inc., License No. H-AP-SS-EHF-88, shall pay a fine of two hundred dollars (\$200.00) 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 29<sup>TH</sup> day of MAY, 2012.



David L. Shenkle, J.

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**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