

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 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 September 3, 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, 11-1433 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 August 3, 2011 and completed it on September 4, 2011. (N.T. 64)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on, September 14, 2011. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 62)

3. On Saturday, September 3, 2011, a Bureau Enforcement Officer arrived in the area of the premises at about 10:50 p.m. The Officer remained in his vehicle until 11:00 p.m., at which time he heard music emanating from the premises. There were two doors that were propped open. The Officer conducted a sound check and determined that he heard the music as far away as 210 feet. The Officer entered the premises and determined the source of the music was a coin operated compact disc player. (N.T. 63-67)

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.

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 18, 2012, 7:00 a.m., and ending Monday, June 25, 2012, 7:00 a.m. Assuming Licensee has complied with Adjudications, (Docket Nos. 10-1268 and 11-1433), regarding placing and maintaining 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 that I imposed in the companion Adjudication, (Docket No. 11-1433).

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 30TH day of March, 2012.

A handwritten signature in cursive script that reads "Felix Thau". The signature is written in black ink and is positioned above a horizontal line.

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