

Mailing Date: SEP 20 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 11-1771
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-436030
	:	
MOLLY MAGUIRES	:	
RESTAURANT & PUB INC.	:	PLCB LID - 57342
193-195-197 BRIDGE STREET	:	
PHOENIXVILLE PA 19460-3401	:	
	:	PLCB License No. R-AP-SS-16273
	:	
CHESTER COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ANDREW R. BRITT, ESQ.**

FOR THE LICENSEE:

**EX PARTE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 18, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Molly Maguires Restaurant & Pub, Inc., License Number R-AP-SS-16273 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 17, 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 September 3, 2011, Licensee, by its servants, agents or employees, 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 on September 3, 2011 and ended on September 3, 2011. A notice of violation letter dated September 21, 2011 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation dated October 18, 2011 was sent to the licensed premises by certified mail, return receipt requested. That certified mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on February 28, 2012 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received (N.T. 9-11 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement visited the licensed premises on September 3, 2011 at approximately 10:50 p.m. While walking south on North Main Street, the officer approached the premises from approximately seventy-five feet away and was able to hear music emanating from the premises over the traffic in the street. As the officer approached and came closer, he was able to observe two small speakers attached to the outside wall of the licensed premises. The officer described the music playing as elevator music, but he was able to hear the music from those speakers over the noise of the street (N.T. 6-7).

3. The officer was also able to hear alternative rock music coming from inside the licensed premises over the noise of the street traffic. The elevator music was somewhat drowned out by the alternative rock music (N.T. 7).

4. The officer, along with a second Enforcement officer, entered the premises and observed two female bartenders and two male bartenders rendering service to approximately forty-five patrons. Passed the bar area once inside the premises, the officer was able to observe a four member band playing instruments. Their music was being electronically amplified through two large speakers on stands next to the band on either side in the rear of the premises (N.T. 7-8)

5. The officer determined that the alternative rap music was coming through these speakers from the licensed premises (N.T. 8).

6. The officers departed the premises after awhile and went outside the main entrance and they were able to hear the same music they heard inside over the noise of the street traffic. The officers walked approximately sixty feet west on Bridge Street outside the licensed establishment. They continued to hear music down the block west on Bridge Street until the music was drowned out by music from another establishment (N.T. 8-9).

7. A separate investigation was conducted at the other establishment by a different officer (N.T. 9).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On September 3, 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 May 8, 2007, and has no record of prior violations.

DISCUSSION:

No one appeared on behalf of the Licensee to contest the charges. If music used on the inside or outside of the licensed premises can be heard beyond the boundaries of the premises, Licensee is in violation of the current law. In this case, the officers walked down the block and were still able to hear the music that was being played inside the premises.

Under the circumstances, a \$350.00 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

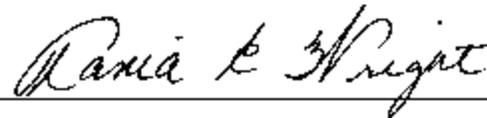
Molly Maguires Restaurant & Pub, Inc.  
In Re: Citation No. 11-1771

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Molly Maguires Restaurant & Pub, Inc., License Number R-AP-SS-16273, pay a fine of Three Hundred Fifty Dollars (\$350.00) 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 14<sup>TH</sup> day of September, 2012.



Tania E. Wright, J.

**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.**

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Molly Maguires Restaurant & Pub, Inc.

In Re: Citation No. 11-1771

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, along with any required documentation, to:

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

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Molly Maguires Restaurant & Pub, Inc.