

Mailing Date: SEP 24 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 11-1993
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-438016
	:	
J D MCGILLICUDDYS	:	
CATERING CO INC.	:	PLCB LID - 58435
111-13 COTTON ST.	:	
PHILADELPHIA PA 19127-1520	:	
	:	PLCB License No. R-AP-SS-7333
	:	
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 22, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against J D McGillicuddys Catering Co., Inc., License Number R-AP-SS-7333 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, April 17, 2012, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

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 October 14, 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. An officer from the Bureau of Enforcement who had been employed by the Bureau for approximately twelve years visited the licensed premises on October 14, 2011 at approximately 10:30 p.m. The officer noted that the music from the premises was what he described as loud. He also indicated that there was music on all three floors but he specifically could hear music coming from the third floor of the licensed premises where a disc jockey was set up with several speakers. There were numerous bartenders on all three floors and there was security at the front door (N.T. 7-8).

2. While on the premises, the officer checked several patrons' identifications to see if they were of age (N.T. 9).

3. When the officers departed the premises, they could hear music coming from the third floor on the outside of the licensed premises. The officers paced off east and west sixty four paces in each direction and west on Crescent Street where they could still hear the music. They then paced down to Main Street of Manayunk which was about eighty paces and they could still hear the music. The officer heard normal street traffic but could hear the music over that traffic (N.T. 9).

4. The officer was unfamiliar with the specific property lines of the property, but did cross Cotton Street and could hear the music while passing a public street (N.T. 11).

CONCLUSIONS OF LAW:

On October 14, 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 beyond licensee's property, 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 June 18, 2007, and has a record of prior violations as follows:

In Re:

Citation No. 07-2116C. \$1,250.00 fine.

1. Sales to a minor.
August 9, 2007.

Citation No. 07-2841. \$300.00 fine.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
September 7, 2007.

Citation No. 08-2061. \$200.00 fine.

1. Failed to comply with the Order of the Administrative Law Judge mandating R.A.M.P. training.
June 30 through August 5, 2008.

Citation No. 10-0845. \$350.00 fine.

1. Sold and/or served more than one alcoholic beverage at one time to one person for the price of one drink.
March 30, 2010.

Citation No. 10-2317X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
June 4, 2010.

DISCUSSION:

While the officer could not testify as to the Licensee's property lines, the officer did testify that he crossed a public street, Cotton Street, and that he could hear music while crossing that street and beyond. Under the circumstances, it is clear that the music could be heard beyond the property of the Licensee, that is to say in the public street.

In that Licensee has no prior violation of this nature and this offense occurred on only one occasion, a moderate 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

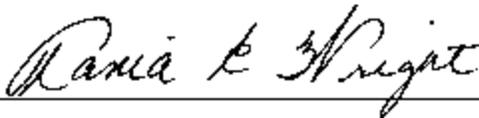
J D McGillicuddys Catering Co., Inc.
In Re: Citation No. 11-1993

ORDER:

THEREFORE, it is hereby Ordered that Licensee, J D McGillicuddys Catering Co., Inc., License Number R-AP-SS-7333, pay a fine of Three Hundred Dollars (\$300.00) 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 14TH 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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J D McGillicuddys Catering Co., Inc.
In Re: Citation No. 11-1993

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

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