

Mailing Date: JUNE 28 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 11-2004
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W05-434977
v.	:	
	:	
SEVEN MOUNTAINS WINE CELLARS, LLC	:	PLCB LID No.: 60953
107 MOUNTAIN SPRING LANE	:	
SPRING MILLS, PA 16875-9041	:	
	:	PLCB License No.: LK-273

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Nadia L. Vargo, Esquire

FOR LICENSEE: John A. Torrente, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on November 28, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Seven Mountains Wine Cellars, LLC (Licensee).

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/outside 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 August 27, 2011.

I presided at an evidentiary hearing on April 13, 2012 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on August 10, 2011 and completed it on October 24, 2011. (N.T. 128)
2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on, November 3, 2011. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-9, N.T. 126)
3. On August 27, 2011, a Bureau Enforcement Officer arrived in the area of the premises at about 6:50 p.m. Upon exiting his vehicle, the Officer heard amplified music which he subsequently determined came from a stage located behind the licensed premises. Later in the evening, the Officer conducted a sound check. He heard the amplified music coming from the stage area as far away as 500 feet. (Commonwealth Exhibit No. C-5, N.T. 50-52; 129-130; 137-139)
4. After the Officer parked his vehicle in the parking lot used by Licensee's customers, he entered the premises. There were about fifteen patrons inside. Some were purchasing or drinking wine. Others took their wine servings through the rear door, which leads to a patio area. Customer traffic from the licensed premises to the patio and open lawn area traveled freely back and forth. Customers who purchased wine in the premises were permitted to take their wine servings with them onto the lawn area from where they could enjoy the music which was provided by one performer playing an electronic keyboard on a stage. (N.T. 133-137; 152-153)

5. Scott and Maryann Bubb, husband and wife, and Licensee's only Members, live on property adjacent to the licensed premises. They own the property as husband and wife upon which the licensed premises is located. The two lease the premises to the licensed corporation. The stage is located on property owned by Mr. and Mrs. Bubb. The power source for the electronic amplification originated in Mr. and Mrs. Bubb's home. (Commonwealth Exhibit No. L-1, N.T. 160-163; 169-171)

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.

DISCUSSION¹:

It has been some time since I heard a case presented by both sides in such a convoluted and unnecessarily complicated manner, especially since there was no significant factual dispute.

As a Limited Winery, Licensee's privileges and obligations are governed by Article V of the Liquor Code. For the most part, the pertinent regulation has been applied to Article IV licensees. In pertinent part, the subject regulation provides:

§5.32. Restrictions/exceptions

- (a) **A licensee** may not use or permit to be used **inside or outside** of the licensed premises a loudspeaker or similar device whereby the sound.... can be heard on the outside of the licensed premises. (emphases mine)

¹ This Adjudication is a companion to Adjudication, In Re Citation No.: 11-1543, charging Licensee with the same violation. The two matters were heard together with the understanding the testimony in one would be applied to the other.

The above excerpt is part of Title 40 Pa. Code, referred to Subchapter C, relating to amusement and entertainment. Subchapter C supplements the Liquor Code in the Amusement Permit which is limited to Article IV licensees. Consequently, there is some argument to be made that all of Subchapter C was intended to be limited to Article IV licensees.

If I accepted that position, Limited Wineries would be free to disturb the community without sanction through this administrative process. Furthermore, the pertinent regulation employs the broadest identifiers as the unmodified term, "licensee" appears. Indeed, subsections (a), (b), and (c) of 40 Pa. Code §5.32, refer to "a licensee." In contrast, subsection (d) is more precise as it refers to specific licensees.

This distinction is sufficient to brush aside any argument limited to the scope of subsection (a). When considered in consorts with Liquor Code Section 104(a) [47 P.S. §1-104(a)], which commands liberal Liquor Code construction and, by necessary implication, Title 40 Pa. Code, to protect the public welfare, health, peace, and morals of the people of the Commonwealth, the inevitable result is the utter failure of Licensee's argument.²

Licensee also suggests the regulation cannot apply as it was not Licensee who provided the entertainment. The evidence however, indicates otherwise. Here, we have a husband and wife who are Licensee's Sole Partners. The personal component (husband and wife) has been so intertwined with the business component (Licensee) that distinguishing between the two is impossible.

PRIOR RECORD:

Licensee has been licensed since January 14, 2009 and has the following Adjudication history:

In Re Citation No.: 10-2450. Fine \$300.00.

Used loudspeakers or devices whereby the sound of music could be heard outside on October 10, 2010.

² As remedial civil legislation, the Liquor Code is to be liberally construed to effect its purpose. **Tony Savatt, Inc. v. Latrobe Brewing Co.**, 583 A.2d 796 (Pa.Super. 1990)

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)

It is interesting that Mr. Bubb claimed his intention was to be a good neighbor as a Licensee. Apparently that intention did not apply to his status as husband because as he seemed to have no difficulty whatsoever in disturbing the community by providing amplified music from the stage. (N.T. 170-172)

I impose a \$500.00 fine.

ORDER:

In Re Citation No.: 11-2004; Licensee, Seven Mountains Wine Cellars, LLC;
PLCB LID No.: 60953; PLCB License No.: LK-273.

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.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 25TH day of June, 2012.



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