

Mailing Date: APR 08 2013

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

PENNSYLVANIA STATE	:	In re Citation No. 12-0515
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-438001
	:	
v.	:	PLCB LID No. 54273
	:	
SOMETHIN SOMETHIN, LLC	:	PLCB License No. R-AP-SS-EHF-4149
1718 SANSOM ST	:	
PHILADELPHIA, PA 19103-5207	:	

JUDGE SHENKLE  
BLCE COUNSEL: Andrew R. Britt, Esq.  
LICENSEE COUNSEL: Edward B. McHugh, Esq.

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 3, 2012. There are two counts in the citation.

The first count alleges that Licensee violated §493(34) of the Liquor Code, 47 P.S. §4-493(34), on December 16, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 2011, January 1, 17, 18, 19, 20, 21, 22, 24 and 25, 2012, 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 beyond the licensee's property line.

The second count alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, on December 16, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 2011, January 1, 17, 18, 19, 20, 21, 22, 24 and 25, 2012, by operating the licensed establishment in a noisy and/or disorderly manner.

A hearing was held on January 24, 2013, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. A liquor enforcement officer investigated the licensed premises by making a few visits to it and receiving complaints of noise. On December 16, 2011, the officer arrived at the premises at about 11:00 p.m. He was visiting the business premises, a beauty salon, of Licensee's next-door neighbor. While inside that business, the officer heard bass tones coming through the wall between it and Licensee's premises (N.T. 6-7).

2. After leaving the business premises, the officer walked past the licensed premises and heard music emanating from it, the same music he had heard inside the salon. The door was open

into the vestibule, and the officer could see that the source of the music was a disk jockey inside the licensed premises, who was using loudspeakers (N.T. 7-9).

3. The owner of the beauty salon was the only neighbor who complained. The salon was not open for business at the time of the officer's visit. During a previous undercover visit during this investigation, the officer went inside the licensed premises when a disk jockey was providing entertainment, and observed no violations (N.T. 13-15).

4. The owner of the beauty salon is also an owner of the real estate at 1716 Sansom Street, adjacent to Licensee's premises. It is a four-story townhouse in the middle of the block between 17<sup>th</sup> and 18<sup>th</sup> Streets. Apart from the beauty salon, which occupies the ground floor, there are two apartments on the second floor. On the third floor there is a studio apartment and the lower level of a two-level apartment, which includes two bedrooms and a bath on the fourth floor (N.T. 23-24).

5. The beauty salon owner has been there since 1982. Licensee's premises, known as the Raven Lounge, has been there three or four years, he believes but is not sure (this license was first issued March 8, 2005). The owner describes his dealings with Licensee as "not pleasant" in that "he ended up basically turning the building into a nightclub and the music is just --- at first it was coming out onto the street, so the complaints from myself and a couple of neighbors ---. He put a soundproof window in instead of café windows. Then the music was coming out of the door, so he put a vestibule in so the music didn't come out of the vestibule and out the front door. And then we continued to complain that the music really started --- at that point started to come through the walls even greater than prior to all that." (N.T. 24-25).

6. On December 16, 2011, the salon owner met the investigating officer at around 11:00 p.m. The owner wanted to take the officer upstairs into the apartments, and asked him to do that, but the officer said it wasn't necessary as the noise was so loud there was a violation. The owner described the music they heard as "a pounding bass and I mean, it's so loud you feel like you're inside of a nightclub..." He went to the upstairs apartment and heard music coming through the common wall there, as well. This was the owner's only contact with the liquor enforcement officer (N.T. 27-30, 43).

7. A woman who lives in a studio apartment in the building next to Licensee's premises (a tenant of the salon owner) has a common wall with the licensed premises and heard noise coming through it, primarily music but also loud voices, on Tuesday through Saturday nights. She filled out a log with dates beginning in December 2011, at her landlord's request (N.T. 57-59).

8. The tenant described in the previous finding never made a complaint to any city or state agency regarding the noise, nor did she meet with the investigating liquor enforcement officer. She admitted that it was possible that the information reflected in the noise log she kept was transferred to it or entered at later dates than the ones stated in the log. Her landlord has spoken to her about his desire to close the licensed premises down (N.T. 69-73).

9. The investigating officer attempted to leave a blank noise log form at the salon premises after the meeting of December 16, but was unable to do so because there was no outside mail slot. He e-mailed the form to the salon owner on January 4, 2012 (N.T. 76-77).

CONCLUSIONS OF LAW:

Licensee violated §493(34) of the Liquor Code, 47 P.S. §4-493(34), on December 16, 2011, by permitting the use on the inside of the licensed premises of a loudspeaker whereby music could be heard beyond the licensee's property line.

The evidence in support of the proposition that Licensee operated the licensed premises in a noisy and/or disorderly manner is insufficient to sustain the second count.

PRIOR RECORD:

Licensee has been licensed since March 8, 2005, and has had prior violations as follows:

In re Citation No. 07-1006. \$300.00 fine.

1. Discounting. November 10, December 4, 2006, January 11 and March 2, 2007.

In re Citation No. 10-1249. \$150.00 fine.

1. Loudspeakers could be heard outside. February 20, 2010.

In re Citation No. 10-2062. \$175.00 fine.

1. Loudspeakers could be heard outside. July 15, 2010.

DISCUSSION:

This is the third complaint from the same person to the Bureau of Liquor Control Enforcement regarding a noise violation at the licensed premises. In defense of each of these complaints, Licensee has presented extensive evidence of its efforts to prevent the problem. The most recent actions include modifications to the speakers set up in the premises, as well as additional soundproofing construction, which ought to prevent any recurrence.

I give no credit to the "noise log" kept by one of the neighboring tenants because the weight of the evidence persuades me it was not a contemporaneous record, but was written up after the fact in response to the landlord's request. The log is not credible on its face. The use of ditto and arrow marks on it to indicate identical entries undermines the claim that it is an honest record.

There is evidence from which it could be concluded that the landlord's complaints in these three cases are not based on actual disturbance, but rather are part of a campaign against the licensed premises motivated by personal animosity or adverse business interest. I find the salon owner's testimony incredible for this reason, and I have discounted most of it.

I sustain the citation solely on the basis of the investigating liquor enforcement officer's visit of December 16, 2011, because I have no reason to question his objectivity or accuracy. The most recent modifications to the licensed premises and its sound system came after the dates mentioned in this citation, so I am hopeful that this matter will not come before me again.

There is no evidence in this record from which I could conclude that Licensee was operating the premises in a noisy and/or disorderly fashion, as distinguished from the loudspeaker violation found in the first count.

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.

The penalty for the first count will be a fine of \$200.00. The second count is dismissed.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Somethin Somethin, LLC, License No. R-AP-SS-EHF-4149, 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 3<sup>RD</sup> day of APRIL, 2012.



David L. Shenkle, J.

jb

**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