

Mailing Date: OCT 17 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-0860
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W09-441542
	:	
RIEGELSVILLE LIQUOR LLC	:	
T/A RIEGELSVILLE TAVERN	:	PLCB LID - 64988
1274 EASTON RD.	:	
P.O. BOX 95	:	
RIEGELSVILLE PA 18077-0095	:	PLCB License No. R-AP-SS-21324
	:	
BUCKS COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, ESQ.

FOR THE LICENSEE:

PATRICK McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 8, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Riegelsville Liquor, LLC, t/a Riegelsville Tavern, License Number R-AP-SS-21324 (hereinafter "Licensee").

Riegelsville Liquor, LLC
t/a Riegelsville Tavern
In Re: Citation No. 12-0860

An Administrative hearing was held on Tuesday, March 12, 2013, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

An interpreter was provided for the benefit of the Licensee to insure that the Licensee had a complete understanding of the proceedings.

The citation charges Licensee with violation of Section 493(34) of the Liquor Code, 47 P.S. §4-493(34), in that on April 21, 2012, 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 the licensee's property line.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement, a veteran of approximately nine years, conducted an investigation of the licensed premises. The officer made a total of five visits to the premises during the course of this investigation. On April 21, 2012, he arrived at the licensed premises, in an undercover capacity, at approximately 10:35 p.m. When he arrived in the area, he parked his state vehicle and exited the vehicle. He stood outside of his vehicle and monitored the residential area for any noise which might be emanating from the premises that might be a disturbance (N.T. 6-8).
2. When the officer exited his vehicle, he could hear music coming from the vicinity of the licensed premises. The officer walked in the direction of the licensed premises counting paces. He heard music, at the farthest distance, approximately 200 feet from the licensed premises. He noted that there were residences in the area approximately 200 feet from the premises (N.T. 8).
3. At approximately 10:50 p.m., the officer entered the licensed premises. He noted that patrons were present and the premises was open for business. There was a band playing inside. The officer noted about fifty to sixty people on the premises. The officer noted the band which had a drummer, two guitars and keyboard. The band was in a separate room inside of the premises where patrons were listening. The music was amplified through two speakers on opposite sides of the band and on floor stands at eye level. The speakers were black in color, approximately eighteen inches wide by three feet in height (N.T. 8-9).
4. The officer noted that the music he heard inside the premises appeared to be the same music that he had heard outside the premises. He saw no other establishment from which the sound of music might be emanating (N.T. 10).
5. When the officer exited the premises, he walked back in the same direction as he had when he had entered. The officer could still hear music thumping and the sound of the guitar, which was more prominent than when he entered the premises (N.T. 10).

Riegelsville Liquor, LLC
t/a Riegelsville Tavern
In Re: Citation No. 12-0860

6. Once outside, the officer checked several different areas where music might be heard or disturbing neighborhood residences. There were approximately five residents outside the premises that could have been affected by the music. He described the area as 90% residential and 10% commercial (N.T. 10).

7. The officer noted that there was a parking lot around the premises. People appeared to be parked in the front and behind in the road that runs behind the licensed premises. The closest road to where the officer investigated the sound of music is approximately 100 feet away (N.T. 13).

8. The officer noted that upon entry to the premises, the door to the premises was propped open (N.T. 14).

9. The officer noted that when he went behind the premises, he could not hear music behind it. The officer believed the sound of music that he heard outside was the direct result of the door being propped open. The officer could hear the sound of the band behind the premises (N.T. 15-16).

10. Daren Errico is an owner of the licensed premises and has been the owner for approximately two years. He previously owned a licensed establishment in New Jersey. He was the owner of the property, the building and the business for eight years, without incurring any violations (N.T. 22-23).

11. The Licensee indicated that it is not his habit to prop doors or windows open. The Licensee indicated that they use window air conditioners. However, during the month of April, they had not been installed. He noted that there were high temperatures for several days during that weekend and it was very hot in the licensed premises and that the patrons were opening doors and windows (N.T. 24).

12. The Licensee went to the person who he believed to be the complainant. He assured him that this was an isolated incident and gave him his cell phone number to contact him in the future if he had a problem (N.T. 25).

13. Approximately six weeks ago, the Licensee received a call from an individual asking him to have the music turned down. However, on that evening, the Licensee indicated there was no music on the premises (N.T. 25-26).

CONCLUSIONS OF LAW:

On April 21, 2012, 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 the licensee's property line, in violation of Section 493(34) of the Liquor Code, 47 P.S. §4-493(34).

Riegelsville Liquor, LLC
t/a Riegelsville Tavern
In Re: Citation No. 12-0860

PRIOR RECORD:

Licensee has been licensed since May 18, 2011, and has a record of prior violations as follows:

In Re:

Citation No. 12-0123. \$350.00 fine.

1. Used loudspeakers or devices whereby the sound of music could be heard outside.
November 19 and December 3, 2011.

DISCUSSION:

The officer made several visits to the premises and found a violation on one occasion, where he also found the door to the premises open. The Licensee was advised to take whatever measures are necessary to contain the music to its own property.

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.

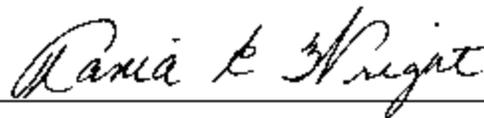
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Riegelsville Liquor, LLC, t/a Riegelsville Tavern, License Number R-AP-SS-21324, pay a fine of Four Hundred Fifty Dollars (\$450.00) 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 24TH day of September, 2013.



Tania E. Wright, J.

Riegelsville Liquor, LLC
t/a Riegelsville Tavern
In Re: Citation No. 12-0860

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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Detach Here and Return Stub with Payment

The fine must be paid by a check drawn on the business or trust account of your attorney, who must be licensed in this Commonwealth, a Treasurer's Check, Cashier's Check or Money Order. **Personal and business checks are not acceptable unless they are certified by your bank.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation (please use the Return Stub when mailing payment or write your citation number on the check) to:

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

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