

Mailing Date: JUL 23 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-0918
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-444541
	:	
KOSHER DAIRY RESTAURANT LLC	:	
1903 CHESTNUT ST.	:	PLCB LID - 53321
PHILADELPHIA PA 19103-3500	:	
	:	
	:	PLCB License No. R-AP-SS-EHF-15491
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 19, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kosher Dairy Restaurant, LLC, License Number R-AP-SS-EHF-15491 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, January 15, 2013, 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 493(34) of the Liquor Code, 47 P.S. §4-493(34), in that on April 19, 2012, 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 beyond the licensee's property line.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on March 23, 2012 and ended on May 5, 2012. A notice of violation letter dated June 1, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received. A citation dated June 19, 2012 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on September 18, 2012 by certified mail, return receipt requested, and by first class mail notifying the Licensee of the scheduled hearing. The mailing was signed as received (N.T. 10-12 and Exhibits B-1 and B-2).

2. A former officer of the Bureau of Enforcement conducted an investigation of the licensed premises. He made three visits to the licensed premises in conjunction with an ongoing investigation. On April 19, 2012, the officer parked his car down the street from the establishment in front of 1918 Chestnut Street. Upon exiting his car, he could hear loud music emanating from the front entrance area of the premises. The officer paced fifty paces to the front entrance. The music got louder as he approached (N.T. 6-7).

3. The officer still went directly in front of the premises and noted that there was the same music playing inside that he could hear outside. He arrived in the area at approximately 8:00 p.m. and entered the premises a short time later. Once inside the premises, he observed that music was being played through approximately six wall mounted speakers measuring two feet by one foot. The music derived from a jukebox (N.T. 7).

4. The officer observed approximately sixty patrons on the premises. He remained on the premises one hour, leaving at approximately 9:00 p.m. The officer noted that the front door was open as well as the front window. The door and window were open when the officer entered and upon exiting the premises. The officer then paced the same fifty paces, or approximately 150 feet, back to his car which was across Chestnut Street and could still hear the music that was being played inside the premises (N.T. 8-9).

5. The other two visits did not lead to any violations (N.T. 9).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On April 19, 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).

PRIOR RECORD:

Licensee has been licensed since December 15, 2004, and has a record of prior violations as follows:

In Re:

Citation No. 11-1322. \$100.00 fine.

1. Used loudspeakers or devices whereby the sound of music could be heard outside.
June 15 and 30, 2011.

DISCUSSION:

The Licensee used or permitted to be used on the inside of the licensed premises, a jukebox and six loudspeakers whereby the sound of music could be heard beyond the Licensee's property line to areas at a distance of approximately 150 feet across the public street. It is noted that although this involved only one date, Licensee has a prior violation for a similar offense. Under the circumstances, a \$350.00 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

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Kosher Dairy Restaurant, LLC, License Number R-AP-SS-EHF-15491, 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.

Kosher Dairy Restaurant, LLC
In Re: Citation No. 12-0918

Jurisdiction of this matter is retained.

Dated this 19TH day of JULY, 2013.



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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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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Kosher Dairy Restaurant, LLC