

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. 12-1111
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-445705
	:	
DOC'S UNION PUB INC.	:	
1843 S. 2 ND ST.	:	PLCB LID - 44979
PHILADELPHIA PA 19148-1946	:	
	:	
	:	PLCB License No. R-AP-SS-EHF-8197
	:	
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 July 24, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Doc's Union Pub, Inc., License Number R-AP-SS-EHF-8197 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, November 20, 2012, 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 May 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 April 21, 2012 and ended on July 1, 2012. A notice of violation letter dated July 10, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on July 11, 2012. A citation dated July 24, 2012 was sent to the licensed premises by certified mail, return receipt requested. The certified mailing was signed as received on July 25, 2012. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on October 9, 2012 by certified mail, return receipt requested, and by first class mail. That certified mailing was signed as received (N.T. 8-10 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises based upon a complaint regarding sales to minors and loudspeakers. As a result, the officer visited the premises on May 19, 2012 arriving outside of the premises at approximately 9:20 p.m. The officer parked his vehicle some distance from the premises and walked to the corner of 2nd and Mifflin where he could hear music emanating from the licensed premises at a distance of approximately 220 feet (N.T. 5-6).

3. Again hearing the music, the officer paced off the distance from 2nd and Mifflin to the front of the establishment. He then crossed the street, made a left turn onto South 3rd Street and walked to the edge of a playground and paced off 110 feet, where he could still hear music emanating from the premises. He then walked across the street and into the bar and heard the same music that he heard outside the premises (N.T. 6-7).

4. Inside the premises, he noted that there were twelve patrons and two bartenders. He also noted a disc jockey playing music through six loudspeakers. Four of these speakers were of similar size and were hanging around the bar. There were two additional large speakers in front of the disc jockey table (N.T. 7).

5. The officer remained on the premises for approximately one hour, exited the premises and walked back towards his vehicle. He stopped there and then made a right at 2nd and Mifflin where he could still hear the sounds of music (N.T. 7-8).

6. The officer made two additional visits after his visit of May 19, 2012, but did not find any further violations (N.T. 9).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On May 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 23, 1999, and has a record of prior violations as follows:

In Re:

Citation No. 01-1545. \$800.00 fine and Verification conditions corrected. Licensee's appeal to Board dismissed. Licensee's appeal to Common Pleas Court modified fine to \$400.00.

1. Sold, furnished or gave liquor for consumption off premises. (Withdrawn by Bureau)
April 28, 2001.
2. Operated the licensed establishment without a valid health permit.
April 28, 2001.

Citation No. 03-0871. \$1,000.00 fine. Licensee's appeal to Board dismissed. Licensee's Appeal to Court of Common Pleas reversed Board's decision. Bureau's appeal to Commonwealth Court reinstated \$1,000.00 fine.

1. Sales to minors.
February 8 and March 29, 2003.
2. Minors frequenting.
February 8 and March 29, 2003.

Citation No. 06-2848C. \$1,500.00 fine.

1. Sales to a minor.
September 21, 2006.

Citation No. 07-0778C. \$2,000.00 fine, R.A.M.P. training mandated and one day suspension.

1. Sales to minors.
November 17 and December 21, 2006.
2. Minors frequenting.
November 17 and December 21, 2006.

Citation No. 09-2929. Three days suspension.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
November 29, 2009.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
November 29, 2009.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
November 29, 2009.
4. November 29, 2009.

Citation No. 10-0735. \$250.00 fine, Verification conditions corrected, four days suspension and R.A.M.P. training mandated. Fine not paid, Verification conditions corrected not submitted and license suspended an additional one day and thereafter until fine paid and Verifications conditions corrected submitted.

1. Operated the licensed establishment without a valid health permit or license.
January 15, 22 and February 27, 2010.
2. Sales to a minor.
January 22, 2010.
3. Minors frequenting.
January 22, 2010.

Citation No. 10-2571C. \$3,000.00 fine and five days suspension.

1. Sales to a minor.
October 28, 2010.

Citation No. 11-0071. \$2,000.00 fine and five days suspension.

1. Sales during a time when the license was suspended.
December 13 and 15, 2010.
2. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension.
December 13, 14, 15 and 16, 2010.
3. Used loudspeakers or devices whereby music could be heard outside.
December 15, 2010.

Citation No. 11-0518. \$200.00 fine and one day suspension.

1. Failed to comply with the Order of the Administrative Law Judge mandating Ramp training. January 26 through March 4, 2011.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years. February 24, 2011.

Citation No. 11-1437. \$350.00 fine.

1. Used loudspeakers or devices whereby the sound of music could be heard outside. May 21, 2011.

Citation No. 12-0641. \$650.00 fine.

1. Used loudspeakers or devices whereby the sound of music could be heard beyond the Licensee's property line. December 2, 3, 2011 and January 13, 2012.

DISCUSSION:

Licensee has a substantial history of violations, which includes violations for loudspeakers. It is noted, however, that this violation was on a single date and the officer made two subsequent visits and found no violations. Under the circumstances, a \$700.00 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

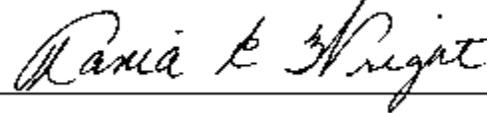
ORDER:

THEREFORE, it is hereby Ordered that Licensee, Doc's Union Pub, Inc., License Number R-AP-SS-EHF-8197, pay a fine of Seven Hundred Dollars (\$700.00) 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.

Doc's Union Pub, Inc.
In Re: Citation No. 12-1111

Jurisdiction of this matter is retained.

Dated this 18TH 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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