

Mailing Date: MAR 14 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 12-1142
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-443238
	:	
SZE AND SZE INC.	:	
50 S. 2 ND ST. &	:	PLCB LID - 48051
37 S. STRAWBERRY ST.	:	
PHILADELPHIA PA 19106-2822	:	
	:	PLCB License No. R-AP-SS-1122
	:	
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 August 14, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Sze and Sze, Inc., License Number R-AP-SS-1122 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, July 11, 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 contains two counts.

The first count charges Licensee with violation of Section 493(34) of the Liquor Code, 47 P.S. §4-493(34), in that on December 27, 28, 29, 2011, January 1, 6, 8, 13, 24, 15, 22, February 3, 11, 13, 14, 15, 18, 19, 22, 23, 25, 26, March 2, 3, 4, 10, 11, 17, 18, 25, 29, 31, April 1, 7, 8, 11, 13, 18, 26, 27, 28, 30, May 6, 7, 11, 12, 19, 20 and 27, 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.

The second count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. §4-471, in that on December 27, 28, 29, 2011, January 1, 6, 8, 13, 14, 15, 22, February 3, 11, 13, 14, 15, 18, 19, 22, 23, 25, 26, March 2, 3, 4, 10, 11, 17, 18, 25, 29, 31, April 1, 7, 8, 11, 13, 18, 26, 27, 28, 30, May 6, 7, 11, 12, 19, 20 and 27, 2012, the licensed establishment was operated in a noisy and/or disorderly manner.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on February 6, 2012 and ended on July 16, 2012. A notice of violation letter dated July 17, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was returned unclaimed. A citation dated August 14, 2012 was sent to the licensed premises by certified mail, return receipt requested. That certified mailing was also returned unclaimed. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on May 17, 2013 by certified mail, return receipt requested, and by first class mail (N.T. 16-19 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 from a resident in the area. The officer made five or six visits to the licensed premises during the course of his investigation (N.T. 6-7).

3. On Saturday, May 19, 2012, the officer stood inside the complainant's doorway. The officer indicated that the premises is actually located on 50 South 2nd Street in Olde City, Philadelphia and directly behind it is a small road much like an alleyway, which is Strawberry Street, where the complainant also lives. The back door of the complainant and the back door of the licensed premises are directly across from one another (N.T. 8-9).

4. The back doors are approximately fifteen feet apart. When the officer stood at the back door of the complainant's residence, he could hear bass tones coming from the licensed premises. The Licensee proceeded to the front entrance of the premises on 50 South 2nd Street. He could hear the same bass tones and music, hip hop in nature, as he entered the premises some thirty feet away (N.T. 10-11).

5. The officer entered the premises at approximately 11:50 p.m. and was carded by an Asian male at the front door. He noted several bartenders and there was a disc jockey in the back portion of the front bar playing the same type of music that the officer had heard outside. There was also a separate interior bar in the back, where he was at. There was a second disc jockey in that area, also playing hip hop music with bass tones (N.T. 11-12).

6. The officer noted a number of speakers on the wall in the front. The disc jockey in the back had a large laptop system. It was too dark for the officer to see the speakers in the back, but he was certain that the music was amplified and that it was the music that he heard, while in the alleyway (N.T. 12).

7. The officer remained on the premises until about 12:40 a.m., during the early morning hours of May 20, 2012. While in the premises, he heard the same music in front of 50 South 2nd Street and in the back of the premises. He also crossed the street/alleyway to the complainant's home where he could hear the same music (N.T. 12-13).

8. The officer contacted the Licensee in February of 2012 and warned him about the complaints regarding loud music. The officer also spoke to the complainant. The officer went to her house and spoke with her, as well as forwarding her a copy of a noise log for her to complete. On June 21, 2012, he picked up the noise log from her (N.T. 13-14).

9. The officer entered the foyer of the complainant's building on June 21, 2012 to pick up the noise log, but never went inside the actual apartment (N.T. 15).

10. G.G. lives in a condo on Strawberry Street, a block away from the building, where a number of restaurants and bars are located (N.T. 21-22).

11. She indicated that the premises is located across the street from her building, although its front door faces 2nd Street (N.T. 22-23).

12. G.G. indicated that a number of years ago, she noted the heavy bass playing at night outside of her bedroom window. It was disturbing so she went outside to try to find the source of it and realized that it was coming from 37 South Strawberry Street. She contacted Air Management Services through the city of Philadelphia. One of the owners told the complainant to contact him whenever there was a problem. She would text the owner when the noise would get loud and he would turn down the bass. The last time she contacted this individual, which was in 2010, he indicated he was no longer involved with the club (N.T. 23-24).

13. The complainant indicated she could not get the same cooperation from the current owner, therefore, she complained to the Liquor Control Board (N.T. 24-27).

14. The investigating officer asked the complainant to keep a log writing down the disturbing noise and/or activity at the licensed premises (N.T. 27).

15. After receiving the log, the complainant made notes at times when she was disturbed by the noise (N.T. 29-30).

16. The complainant indicated that she heard loud bass from dance type music. She said it sounded very amplified (N.T. 38).

17. The noise log contained entries from December 27, 2011 to May 27, 2012 (N.T. 38).

18. The complainant indicated that she was disturbed by noise from the licensed premises from December 27, 2011 until May 27, 2012. On all occasions, she indicated that it was dance music with pounding bass that at times was extremely loud. She heard the music through closed doors at the licensed premises and closed doors and windows in her own home. Music was heard on December 27, 28, 29, 2011, January 1, 6, 8, 13, 24, 15, 22, February 3, 11, 13, 14, 15, 18, 19, 22, 23, 25, 26, March 2, 3, 4, 10, 11, 17, 18, 25, 29, 31, April 1, 7, 8, 11, 13, 18, 26, 27, 28, 30, May 6, 7, 11, 12 and 27, 2012 (N.T. 37-38).

19. The complainant indicated that she kept notes according to the activity and that the log was transcribed directly from notes. She noted a correction which was that on April 27, 2012 into the early morning hours of April 28, 2012, she had transcribed that the start time of the noise was 1:25 a.m. when it actually began at 10:15 p.m. The noise would have been from 10:15 p.m. to 1:15 a.m. (N.T. 31-34, 36 and Exhibit B-3).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On December 27, 28, 29, 2011, January 1, 6, 8, 13, 24, 15, 22, February 3, 11, 13, 14, 15, 18, 19, 22, 23, 25, 26, March 2, 3, 4, 10, 11, 17, 18, 25, 29, 31, April 1, 7, 8, 11, 13, 18, 26, 27, 28, 30, May 6, 7, 11, 12, 19, 20 and 27, 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).

Count No. 2 - On December 27, 28, 29, 2011, January 1, 6, 8, 13, 14, 15, 22, February 3, 11, 13, 14, 15, 18, 19, 22, 23, 25, 26, March 2, 3, 4, 10, 11, 17, 18, 25, 29, 31, April 1, 7, 8, 11, 13, 18, 26, 27, 28, 30, May 6, 7, 11, 12, 19, 20 and 27, 2012, the licensed establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471.

Sze and Sze, Inc.
In Re: Citation No. 12-1142

PRIOR RECORD:

Licensee has been licensed since October 16, 2001, and has a record of prior violations as follows:

In Re:

Citation No. 03-1320. \$100.00 fine and Verification conditions corrected. Verification not submitted and license suspended one day and thereafter. Suspension vacated.

1. Operated the licensed establishment without a valid health permit or license.

Citation No. 08-2685X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
September 12, 2008.

DISCUSSION:

The complainant was disturbed on numerous occasions with noise from the licensed premises, which was in the form of one or more disc jockeys who were playing on the premises through speakers or amplified sources. The Licensee did not appear and did not offer a defense or mitigation to the cited charges. The Licensee has no prior record involving a violation of this nature, however, this noise went unabated over an extended period of time. 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$350.00.

Count No. 2 - \$350.00.

Accordingly, we issue the following

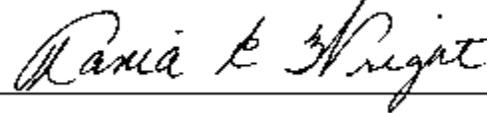
ORDER:

THEREFORE, it is hereby Ordered that Licensee, Sze and Sze, Inc., License Number R-AP-SS-1122, 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.

Sze and Sze, Inc.
In Re: Citation No. 12-1142

Jurisdiction of this matter is retained.

Dated this 27TH day of February, 2014.



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 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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Sze and Sze, Inc.