

Mailing Date: OCT 22 2014

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

|                            |   |                              |
|----------------------------|---|------------------------------|
| PENNSYLVANIA STATE         | : |                              |
| POLICE, BUREAU OF          | : | In Re: Citation No. 12-1225  |
| LIQUOR CONTROL ENFORCEMENT | : |                              |
|                            | : |                              |
| v.                         | : | BLCE Incident No. W01-445160 |
|                            | : |                              |
| 626 FRONT LLC              | : |                              |
| 626-628 N. FRONT ST.       | : | PLCB LID - 65031             |
| PHILADELPHIA PA 19123-3102 | : |                              |
|                            | : |                              |
|                            | : | PLCB License No. R-AP-SS-237 |
|                            | : |                              |
| PHILADELPHIA COUNTY        | : |                              |

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ANDREW R. BRITT, ESQ.**

FOR THE LICENSEE:

**EDWARD B. McHUGH, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 21, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 626 Front, LLC, License Number R-AP-SS-237 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, February 26, 2013, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

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 January 27, 28, 29, February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, March 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 30, 31, April 1, 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, May 4, 5, 6, 10, 11, 12, 17, 18, 19, 20, 24, 25, 26 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 January 27, 28, 29, February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, March 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 30, 31, April 1, 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, May 4, 5, 6, 10, 11, 12, 17, 18, 19, 20, 24, 25, 26 and 27, 2012, the licensed establishment was operated in a noisy and/or disorderly manner.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Officer C.M. from the Bureau of Enforcement conducted an investigation of the licensed premise as a result of complaints of loudspeaker violations and disorderly operations. At the time of hearing, she had been employed with the Bureau for approximately six years. On Sunday, April 7, 2012 at approximately 12:50 a.m., the officer paid a twenty dollar cover charge and entered the licensed premises. The officer was not able to hear any music outside the premises upon entering or leaving the premises. Once inside, she observed some seventy patrons and a male disc jockey, who was located at the rear of the premises. At 1:50 a.m., the disc jockey announced that it was time to leave. The patrons began exiting the building. Two female patrons began arguing with one another and once outside had a physical altercation. The security guards broke up the fight and told those patrons who were standing around to depart. A squad car from the 6<sup>th</sup> police district arrived, but at that point the patrons had departed the area (N.T. 7-11).

2. On April 13, 2012, the Bureau officer spoke with the complainant D.W., who stated that he had been keeping records of the times he had been disturbed by noise and music from the licensed premises. The Bureau provided the complainant with a *Loudspeaker/Noise Log*, a form to record the type of noise, dates and times Licensee was disturbed. The Bureau received the completed form from the complainant on May 14, 2012 (N.T. 21-22).

3. On Sunday, April 22, 2012, C.M., and a second officer from the Bureau, arrived in the area of the licensed premises to observe the behavior of the patrons as they departed the premises. At about 1:55 a.m., the officer observed patrons coming out of the licensed premises. Many of the patrons went directly to their cars, others congregated outside – talking and yelling. One male, who had come from the licensed premises, urinated in a storage bin across the street from the bar. At approximately 2:15 a.m. a police car from the 6<sup>th</sup> District arrived in the area of the licensed premises, whereupon the remaining patrons dispersed (N.T. 12-13 and 27).

4. On Wednesday, April 25, 2012, Officer C.M., along with two other Bureau officers, went to the area surrounding the licensed premises to talk to residents. The officers spoke with two residents and left a *Nuisance Bar Questionnaire* in the mailboxes of other residents, living within a 500 foot radius of the licensed premises, who were not home at the time. The residents, who were not available to speak with the officers, were to complete the forms and return them to the Bureau. The officers also went to the 6<sup>th</sup> Police District to see if there were any police reports relative to the licensed premises, but there were no reports (N.T. 13 and 31).

5. On Sunday, May 6, 2012, Officer C.M. arrived at the licensed premises at approximately 1:30 a.m. and was able to hear loud music emanating from the premises from distances of up to 75 feet from the licensed premises. The officer paid a cover charge and entered the premises. There were approximately sixty patrons remaining on the premises. There was a disc jockey in the rear of the building, playing music through speakers located throughout the premises. At approximately 1:50 p.m., Licensee made an announcement that the bar was closing. Everyone departed the premises at about 2:00 a.m. and the sound system was turned off. Once outside, the officer was not able to hear music. The officer observed patrons lingering outside the premises for a while, but by 2:15 a.m. they had departed (N.T. 13-15 and 32-33).

6. On May 20, 2012 at approximately 1:30 a.m., Officer C.M. and her supervisor arrived in the area of the licensed premises, to speak with the complainants. When the officers entered the complainant D.W.'s home, they were able to hear loud music and bass sounds through the shared wall of the licensed premises and D.W.'s home. The officers then went to the licensed premises and spoke with Marc Stein, an owner, and explained that complaints had been received regarding loudspeakers and disorderly operations, due to patrons entering and departing the premises. Mr. Stein explained that he had installed soundproofing to help with the noise level and that he would have security outside, during closing, to help move the crowd, so as to not disturb the residents. Officer C.M. remained in the vicinity until about 2:30 a.m. when the premises closed, but observed no fighting, public urination, open containers nor vandalism (N.T. 16 and 32-35).

7. D.W. lived in a home which shared a wall with the licensed premises. He lived at that location from March of 2005, until he vacated the premises in May of 2012. He indicated that the licensed premises opened for business on January 28, 2012. D.W. was first disturbed at 3:00 a.m. on January 27, 2012, by what he believed to be sound testing at the licensed premises, prior to their opening. He pounded on the door at 6:00 a.m. and sent a text and e-mail to his landlord, Yishai Kedar, who is also the landlord of the licensed establishment. D.W. indicated that from 9:00 p.m. until 2:00 a.m., whenever the licensed premises is open, he is disturbed by noise – treble, heavy bass, music, talking and/or laughing and has witnessed fights outside the premises. Generally, the premises is open on Friday and Saturday nights, but was sometimes open on other nights of the week. At or near the time of the incidents, D.W. recorded, in a notebook, every night the premises was open and he was disturbed, every night he left his home to find somewhere else to sleep (32 occasions), and every night the noise was excessive. He transferred his notes to the noise log that he obtained from the Bureau officers. After several efforts by the landlord and Licensee to soundproof the premises proved futile, the relationship between the landlord, Licensee and D.W. became acrimonious (N.T. 39-85).

8. According to the testimony and noise logs prepared by D.W., D.W. was disturbed by music and noise from the licensed premises on January 27, 28, 29, February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, March 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 30, 31, April 1, 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, May 4, 5 (the log indicates Friday, 5/5/2012, and Saturday 5/6/2012, however Friday was actually May 4<sup>th</sup> and Saturday was May 5<sup>th</sup>), 6, 10 and 20, 2012 (N.T. 47-58 and Exhibit B-3).

9. D.R. resides around the corner, about 300 feet from the licensed premise. D.R. stated that in response to questions regarding renovations to the building the previous year, the neighborhood association was told that a restaurant was opening. D.R. indicated that they were shocked to find out that instead, it was what D.R. described as a “full-blown club.” D.R. explained that the establishment opened on or about January 27, 2012 and there were crowds of about twenty-five people lined up, waiting to get in and people were partying in the street and blaring music from their cars, which were parked on the block where she resides. The music was very loud, coming from inside the premises, and she could feel vibrations and pounding bass, inside her home. She indicated that the music disturbs her whenever the premises is open, to include every weekend from 11:00 p.m. until after 2:00 a.m., when the establishment closes, as well as some other nights, such as Thursdays. By March of 2012, D.R. was lodging regular complaints with the state and local police (N.T. 86-92).

10. On April 22, 2012, D.R. heard incredibly loud screaming and yelling and the music was particularly loud. D.R. went outside to see the whole corner blocked off with people in the street and a bus trying to get through the street. On the corner of Front and Fairmount Streets, across from the club, she saw a person whom she believed had passed out and was being dragged by both arms. D. R. took photos, which depicts a man lying on his back, with a grimace on his face; his torso is on the sidewalk and legs are in the street. Two men are holding him by his arms and hands. There is a group of people, about eleven of whom are visible in the photo, made up of what appears to be predominantly young adult African-American and/or other people of color, clad in casual dress and/or party attire and scattered about on the street corner. Signage in the background reads "Club Aura" indicating that the crowd is outside of the licensed premises. There also appears to be a great deal of traffic in the streets. D.R. was standing in the street, across from the licensed premises, when she took the photographs (N.T. 92-102 and Exhibit B-4).

11. At the end of April of 2012, D.R. received a noise log, but had made records of the incidents at the time they occurred. She completed the noise log using her own records, which included previous e-mails and records of her phone complaints. She recalled witnessing a fight outside the premises in April of 2012. At the time of hearing, D.R. was still phoning the police every weekend, regarding noise at the licensed premises. According to the logs completed by D.R., she was disturbed by noise and music from the licensed premises on January 27, 28, 29, February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, March 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 30, 31, April 1, 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, May 4, 5, 6, 10, 11, 12, 17, 18, 19, 20, 24, 25, 26 and 27, 2012 (N.T. 102-140 and Exhibit B-5).

12. J.B. is the spouse of D.R. and resides approximately three row homes away from the licensed premises. During January to May of 2012, on Friday and Saturday nights, people coming to the club made noise in the street, which included crowd noise, fighting, yelling, breaking glass and playing their car radios outside his home from 10:00 or 11:00 p.m. until 2:00 a.m., when the club closed for the night. Around May of 2012, the club also began opening on Thursday nights. J. B. also completed a noise log. J.B. can also hear the booming bass in his bedroom from music being played at the licensed premises, which prevents him from sleeping. The backyards to the properties are connected. Between 2:00 a.m. and 3:00 a.m., J.B. indicated it was a like a mob, as patrons exited the premises with people yelling and breaking bottles. The first two weekends that the premises was open, J.B. called the police every night. He indicated that by the time the police arrive, often the patrons are gone. J.B. was away for two weeks in mid-March. J.B. attempted to photograph the crowd to support his complaints, but personnel at the club were aggressive and questioned him as to why he was taking photos. As a result, he felt threatened, nervous and a little scared (N.T. 141-173).

13. R.D. and his spouse J.D. have resided in Northern Liberties for more than thirty years. Their home is on the north side of Fairmount Avenue and approximately ten to twelve houses away from the licensed premises. R.D. was disturbed by incidents on March 23, 2012, April 1, 2012 and April 27, 2012 and other unknown dates. On March 23, 2012 around 11:30 p.m., R.D. heard loud music and loud voices and saw a group of young men on the street, one of whom was urinating near R.D.'s car. R. D. hollered at them, they responded and R.D. called 911. He states that the men then walked to the entrance of the licensed premises. At approximately 2:10 p.m., he was returning home and saw a lot of activity on the street, as the licensed premises was closing. A woman in an SUV alighted from the vehicle, hopped from one foot to another, squatted and urinated across the street from R.D.'s home. R.D. called 911. On April 27, 2012, around 2:00 a.m., R.D. and J.D. were awakened by a commotion. They saw a car blocking Hope Street, a small street running north and south. Two women were fighting. Another passenger in a car kept slamming the doors and yelling at one another. R.D. called 911 and a woman got in a vehicle and sped away nearly hitting other cars (N.T. 200-220 and Exhibit B-6).

14. J.D. completed a log regarding incidents from January 2012 through May 2012, when she was disturbed by music and noise from the licensed premises. On Friday, April 27, 2012, she was asleep and at about 2:15 a.m., she heard screaming and shouting on the street. Her bedroom is in the back of her house and she usually cannot hear street noise from her bedroom. J.D. saw people streaming out of the club. Some of the patrons were getting into cars and turning on their music and making noise. She or her husband called the police and were looking out of the window. J.D. saw two women, in front of the licensed establishment, engaged in a screaming match. They appeared to be drunk in that they were swaying. One of the women attempted to get in the car and fell flat on the sidewalk. She got up and got into her car, turned on the ignition and drove off, nearly hit cars parked on the north side of the street. J.D. again called the police at 2:30 a.m. to report her observations. She returned to bed at 3:00 p.m., no police car had responded (N.T. 220-228).

15. J.D. was disturbed by music and noise on other unknown dates. Generally, when the club is open she can hear loud noise from the club about 10:00 p.m., when it opens. She indicated that people are "tailgating," opening the doors to the cars, playing music, drinking, smoking and screaming in the streets. The noise resumes from 2:00 a.m. until about 2:45 a.m., as people leave the premises. She also attributes accumulation of trash in the nature of liquor bottles, broken bottles, cups, fast food bags and occasionally clothing on Front Street and in the 100 block of Fairmount (parking areas) to patrons of the licensed premises. Through social media, J.D. posted remarks regarding the licensed premises, opining that the club should open up in drug infested crime ridden, dangerous areas of the city "where [its] high class clientele come from" (N.T. 228-230).

16. Lieutenant Pedro Rosario is an employee of the Philadelphia Police Department. At the time of hearing, he was assigned to the 25<sup>th</sup> Police District. In December of 2005 until December of 2012, he was assigned to the 6<sup>th</sup> Police District, where the licensed premises is located. He was advised by his captain of numerous complaints from the community. He was instructed to make periodic spot checks of the licensed premises, without prior announcement, to make sure that they were in compliance with any licensing agreements. He first met with the Licensee and advised him that he would be doing spot checks of the premises. The lieutenant was advised of a Cease Operations Order, which prohibited live bands and dancing on the premises and required the music to be lowered and remain below a certain level. On three occasions prior to December of 2012, the lieutenant went to the premises, without further announcement, and checked the entire bar, but found no violations. The lieutenant saw people entering and leaving the premises in an orderly fashion and security personnel outside the premises. He saw no large crowds, no public urination, no intoxicated patrons and no open containers. Other officers also went to the premises in response to 911 calls, but saw little activity (N.T. 175-198).

17. Lieutenant Sean Dandridge is employed with the Philadelphia Police Department, 18<sup>th</sup> District. During January through May of 2012, he was assigned to the 6<sup>th</sup> District, where the licensed premises is located. Starting in September of 2012, (a time period after the date of offenses in the instant citation) he worked from 12:00 a.m. to 8:00 a.m. and responded to some complaints regarding the licensed premises. The first time he responded he saw eight people outside. He described the people as being “upscale, professional African Americans.” There was no noise or disturbance. He has patrolled the area around the club, but never had a problem at this location. Philadelphia Police Officers have responded to numerous complaints at this location, which were unfounded (N.T. 256-280).

18. Marc Stein is the owner and operator of the licensed premises, trading as “Club Aura,” and is located at 626 Front Street, in the city of Philadelphia. He opened the club in January of 2012. He described it as a two story venue, with the first floor having a full service kitchen and two bathrooms. It also has a VIP area upstairs with private booths, plasma TV’s, another bar and another set of bathrooms. The bathrooms have multiple stalls. Licensee did not acquire the necessary municipal permits for disc jockeys and dancing, prior to opening. The neighborhood association then blocked their request for a special assembly use permit, which would have allowed them to have a live disc jockey. Because they did not have the required permits, a partial Cease Operations Order was issued to them on June 20, 2012, prohibiting disc jockeys and dancing. Licensee then removed the disc jockey booth and put more tables upstairs. During January through May of 2012, the Licensee opened from Thursdays through Saturday, but subsequently changed those days to Saturdays and Sundays (N.T. 281-288 and 328).

19. Around late March or early April of 2012, Licensee met with the complainant Mr. Witz, the landlord, Philadelphia police, Bureau officers, and a contractor regarding the complaints. Mr. Stein described his clientele as an African American “urban professional upscale crowd.” An unknown individual responded that “urban and upscale don’t mix.” Licensee spent \$10,000.00 to soundproof the premises, as a result of the complaints and Court intervention. The sound system was adjusted numerous times to lower the music. In the summer of 2012, Licensee hired two security guards for the outside of the premises on Friday nights. From January through May, Licensee employed four men and a woman for security at the premises, each of them is equipped with a hand radio. All the bouncers are certified through the city, which teaches them CPR, responsible alcohol management, and how to deal with intoxicated patrons (N.T. 288-301 and Exhibit L-3).

20. Licensee has a full kitchen and menu, which is open until approximately 1:30 a.m. Everyone is generally off the premises shortly after 2:00 a.m. and security is outside to see that the patrons get to their cars parked on Front Street and in the parking lot across the street. The owner gave Mr. Witz a phone number and asked him to call if there was too much noise. Licensee offered Mr. Witz a room at the Marriott if they had a big party on the premises. Mr. Witz indicated that he would not be satisfied until the club was closed; the landlord subsequently terminated his month to month lease. Licensee does not allow patrons to leave the premises with open containers. Whenever there is a line, they put up red ropes on Front Street in order to steer the crowd away from Fairmount, where the neighbors live. Licensee has installed some outside cameras and intends to install more. The club capacity is 190 and he has approximately 200 patrons on Friday and Saturday nights (N.T. 302-328).

21. George Ballouz is a licensed engineer and contractor who did the initial construction on the licensed premises. He is not an expert, but does have experience with soundproofing. He indicated that Mr. Stein paid approximately \$35,000.00 to \$40,000.00 for soundproofing at the time of construction of the building, using soundproofing and weatherproofing material. A second phase of soundproofing was done on the stairway from the first to the third floor, at a cost of \$12,000.00 - \$15,000.00 to address the issue of the shared wall between the club and D.W.’s residence (N.T. 329-336 and Exhibits L-4, L-5 and L-6).

22. Rashad Atkinson resides in an apartment immediately adjacent to Club Aura and has lived there since June or July of 2012. He does branding and marketing for the licensed premises. His company has a profit sharing agreement with the club. He facilitates events at the premises, acts as a manager, and is there on a regular basis. Several national sororities and fraternities, a state representative and others have held events at the premises. Mr. Atkinson reviewed the photographs taken of the individual laying on the sidewalk and in the street. There was an event on the premises and there were a large number of people present. Mr. Atkinson does not recall anyone having open containers or being rowdy that night. He recalled that the person’s foot had been rolled over by a car tire and that the person was asked if they wanted someone to call for medical assistance, but declined the offer. He does not believe that the person was intoxicated. There is a dress code at the premises prohibiting, T-shirts, Timberland boots or anything that is deemed athletic wear (N.T. 339-355).

23. Outside security is used to usher the patrons to their cars. Once the inside of the premises is cleared of patrons, the security persons assist with outside security. Other personnel come out and clean up before they leave for the night. Mr. Atkinson states that he cannot hear sound from the premises in his apartment (N.T. 356).

24. Thomas DeShazor is the general manager at the licensed premises. He supervises the staff and sets up for events. He keeps in contact with the security team, using radios. He indicated that security is outside the building at closing. Mr. DeShazor presented a diagram, which may not be drawn to scale, but shows the surrounding streets and the location of the various complainants' homes. Mr. DeShazor pointed out, through the use of the diagram, that there are numerous large capacity businesses/venues in the area whose customers also park their cars on the street, in the surrounding area. (N.T. 357-367 and Exhibit L-7).

#### CONCLUSIONS OF LAW:

Count No. 1 - On January 27, 28, 29, February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, March 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 30, 31, April 1, 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, May 4, 5, 6, 10, 11, 12, 17, 18, 19, 20, 24, 25, 26 and 27, 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, in violation of Section 493(34) of the Liquor Code, 47 P.S. §4-493(34).

Count No. 2 - On January 27, 28, 29, February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, March 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 30, 31, April 1, 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, May 4, 5, 6, 10, 11, 12, 17, 18, 19, 20, 24, 25, 26 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.

#### PRIOR RECORD:

Licensee has been licensed since December 23, 2011, and has no record of prior violations.

#### DISCUSSION:

The Bureau issued a citation to the Licensee for alleged loudspeaker violations and noisy and disorderly operations on 56 dates, between January 27 and May 27, 2012. Section 4-493(34) of the Liquor code, 47 P.S. §4-493(34), prohibits a licensee from using a loudspeaker or similar device inside or outside the licensed premises whereby the sound of music can be heard beyond Licensee's property line. Licensee is strictly liable for such violations.

Licensee is also charged with operating in a noisy and disorderly manner in violation of Section 471 of the Liquor Code, 47 P.S. §4-471, which permits the Bureau to bring a charge against a licensee for any other sufficient cause. Conduct is noisy and disorderly when it is of a relatively continuous nature and causes “disturbance and effrontery to the public welfare, peace and morals.” See *Appeal of Ciro’s Lounge, Inc.* 348 A.3d 141, 143 (Pa. Cmwlth. 1976). The Licensee can be held responsible for noisy and disorderly operations where that conduct is found to reflect the operation and character of the business. *Id.*

When violations of the Liquor Code and its attendant laws and regulations are not the conduct under review, a licensee is liable only if he knew or should have known of the illegal activity and if he fails to prove substantial affirmative measures to eliminate a known pattern of illegal activity. *PLCB v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988).

Whether or not the violation is a strict liability offense, nevertheless the Bureau has the burden of proving by a clear preponderance of evidence that the violations occurred. *Pa. Liquor Control Board v. PPC Circus Bar, Inc.*, 506 A.2d 5211 (Pa. Cmwlth. 1986); *In Re: Omicron Enterprises*, 449 A.2d 857(Pa. Cmwlth. 1982). Also see *Appeal of Centinis License*, 59 Lanc. L.R. 105 (1964). The phrase “preponderance of evidence” has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. *Black’s Law Dictionary, Fifth Edition*, West Publishing Company, Copyright 1979, Page 1064.

After extensive testimony by Bureau and Licensee’s multiple witnesses, the parties were given an opportunity to submit briefs in this matter. Counsel for Licensee argues that (A) the Bureau, through its witnesses, failed to establish a nexus between the activity alleged and the operation of the licensed establishment and/or that the witnesses, from the neighborhood, lacked credibility and/or accuracy; and (B) Licensee took corrective measures to reduce the sound of music and or noise through soundproofing, adjusting equipment and constant monitoring, immediately upon learning of the complaints. The Bureau argued that it demonstrated, through testimony of an Enforcement officer and neighboring residents, that the Licensee repeatedly committed loudspeaker violations and operated the establishment in a noisy and disorderly manner.

Officer C.M. from the Bureau of Enforcement was assigned to investigate complaints of loud music and disorderly conduct at the licensed premises. Officer C.M. visited the premises on April 7, 2012 and witnessed a verbal altercation between two patrons inside the licensed premises, which turned into a physical confrontation as they exited the licensed establishment. By the time the police arrived, the fight had ended and the crowd had dispersed.

On April 22, 2012, Officer C.M. saw patrons of the licensed establishment loitering and yelling, and another urinated in a storage bin, after they exited the licensed premises. After a car from the 6<sup>th</sup> police district arrived at the scene, the patrons dispersed.

On May 6, 2012, the officer heard loud music, while on the street outside the premises and at a neighbor/complainant's home, which was coming from a source inside the licensed premises. The officer noted that there were no other establishments in the area from which the music could have originated. The Court found the officer's testimony credible, reliable and essentially corroborative of the testimony of the five neighbors' complaints. Evidently, the crowds do disperse fairly quickly since the local police never witnessed any behavior which resulted in a citation or arrest. The fact that the excessive noise may be for a short time is little consolation to people who have been awakened at 2:00 a.m.

Some witnesses could not remember each and every date, but rather relied in large part on their noise logs. Licensee's counsel complains that the logs and nuisance bar questionnaires, given to them by the Bureau, were not made simultaneous to the events, although the witnesses indicate that the information was transcribed from notes onto the forms and were made at or near the time of their observations. One or more of the complainant's made disparaging remarks through social media about the licensed business and in particular the people who patronized the licensed premises, which could indicate bias and intolerance. A complainant who lived next door and was consistently disturbed by music and noise from the premises, lost his lease on his apartment, and no longer lives in the neighborhood, again through social media, commented in such ways that could suggest that he has a vendetta against the Licensee.

Notwithstanding any motivation to shut down the club, beyond a desire to have a reasonable degree of peace and quiet in the neighborhood, the Court found the various complainants' testimony credible, in substantial part, and supported by the photographic evidence and corroborated by the Bureau's witnesses and by each other. It has been established that it is for this Court to decide the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robison*, 561 A.2d 82 (Pa. Cmwlth. 1989). Further, this Court may accept or reject, in whole or in part, the testimony of any witness. *Kubler v. Yeager*, 150 A.2d 383 (Pa. Super 1959).

Licensee had an absolute and irrefutable duty to contain its music and noise within the boundaries of its property. It violated that duty numerous times prior to taking significant and costly measures to alleviate the music being played on the premises that could be heard in the streets and in the nature of pounding bass in the neighbors' homes. These loudspeaker violations alone, which were of a repeated and continuous nature, are sufficient to substantiate that the Licensee operated in a noisy and disorderly fashion. In addition, the evidence did tend to show a nexus between the Licensee and the off time conduct outside the premises in that its patrons, particularly upon leaving the premises at 2:00 a.m. while still on or near the premises, were loud, loitering, engaged in arguments and fights, urinated in public areas, and were disruptive of the street traffic and the quiet enjoyment of the neighborhood by its residents. Licensee was immediately notified that the music from its premises and its patrons' noise and behavior was disruptive to the lives of the neighboring residents.

Licensee has since made efforts to soundproof, monitor its sound system, hire managers to book and oversee events for established professional and reputable groups, supervise and instruct its personnel, as well as hiring trained security with radios to communicate, in order to better maintain and disperse crowds. For future reference, *substantial efforts* to soundproof the premises, that do not alleviate music from being heard in neighboring houses or otherwise outside Licensee's property, will not prevent Licensee from being cited for loudspeaker violations under Section 493(34) of the Liquor Code, 47 P.S. §4-493(34), which is a strict liability offense. However, it should be clearly understood that the mere existence of an orderly crowd entering or leaving a licensed premises, even with some degree of noise, is not cause to find that Licensee is operating in a noisy and disorderly manner.

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 - \$750.00.  
Count No. 2 - \$750.00.

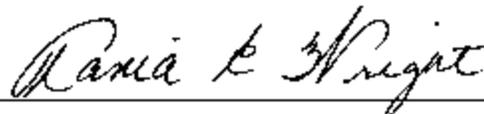
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 626 Front, LLC, License Number R-AP-SS-237, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) 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 14<sup>TH</sup> day of October, 2014.



Tania E. Wright, J.

626 Front, LLC  
In Re: Citation No. 12-1225

**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 - Note Citation Number on Check**

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The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the account of an attorney, who must be licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless they are certified by your bank.** If you are paying by guaranteed check, please make it 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

**Credit/Debit Cards may be used:** visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us) and look under LEGAL/Office of ALJ for instructions.

In Re: Citation No. 12-1225  
626 Front, LLC