

Mailing Date: APR 27 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1167
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-458493
	:	
BRICHEASIO, INC.	:	
224 MARKET ST.	:	PLCB LID - 67107
PHILADELPHIA, PA 19106-2815	:	
	:	
	:	PLCB License No. R-AP-SS-EHF-7925
PHILADELPHIA COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ANDREW R. BRITT, ESQ.**

FOR THE LICENSEE:

**JOHN McCREESH, III, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 11, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Bricheasio, Inc., License Number R-AP-SS-EHF-7925 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, August 19, 2014, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(34) of the Liquor Code, 47 P.S. §4-493(34), in that on March 9, 10, 15, 16, 21, 29 and April 13, 2013, 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. Officer C.V. has been employed with the Bureau for approximately three and half years at the time of hearing. The officer entered the premises regarding a complaint that music could be heard off the licensed premises. The officer contacted the complainant in March of 2013, to provide him with a noise log and again to collect the noise log in May of 2013 (N.T. 8-9).

2. Mark Goulian resides at 210 Church Street in Old City, Philadelphia. He moved there in 2003. The licensed premises is located at 224 Market Street. The Licensee indicated that 224 Market Street is on the south side of Market Street directly across from Grindstone Alley, which is the alley that runs between Market Street and Church Street. He indicated that the entrance to his unit faces Grindstone Alley (N.T. 11-15).

3. The complainant began keeping a noise log on March 9, 2013. In March, 2013, he recalls hearing a deep sounding bass and determined that the music was coming from inside the Red Sky, but did not enter Red Sky on that occasion. He looked from the outside of the premises and it appeared to be disco lights and dancing on the upper floors. He noted that there was a disc jockey on the upper floors, but could not tell where the speakers were located. He has been inside the premises on a previous occasion (N.T. 16-17).

4. On March 10, 2013, the complainant was in his bedroom and because of the noise he put on his clothes and went outside to make sure that the noise was in fact coming from the licensed premises. The complainant indicated that in Old City, there are many potential sources of noise, in particular there is another establishment next door to the licensed premises, which is a potential for noise. On March 10, 2013, he walked up to Market Street and determined that the noise was coming from 224 Market Street and not 222 Market Street, which is Marmont (N.T. 18-20).

5. On March 15, 2013, the complainant noted that there was repeated booming bass and also determined that the noise was coming from the licensed premises on this night (N.T. 22-23).

6. On March 16, 2013, the complainant noted that his walls were shaking because of the bass. He went across the street at that time and there was someone standing outside of the licensed premises, therefore, he had requested to speak with the manager. The person identified himself as Jim M. and indicated that he was the general manager. The complainant told him that "the music was too loud" and that "it was insane." The complainant requested that they turn the music down and Jim indicated that he would try to see what he could do. Jim stated, "We're a club in Old City, so there is a limit to what we can do" (N.T. 20-21).

7. On March 21, 2013 and similarly on March 29, 2013, the doors and windows were open at the licensed premises. While in bed, the complainant heard booming repetitive bass coming from what appeared to be a disc jockey. He got out of bed, put on his clothes and went outside to determine that the source of the noise (N.T. 24-25).

8. On April 13, 2013, the complainant heard deep bass coming in through the bedroom window. New soundproofing had been put on the windows because of the repeated problem of noise. The soundproofing was put on in the summer of 2011. Outside he heard more deep booming bass. He indicated that most times it does not come through the soundproof windows. He went outside to verify and determined that the noise was coming from the licensed premises, which he referred to as Red Sky (N.T. 25-26).

9. Officer C.V. indicated that he personally contacted the Licensee on March 23, 2013 and that the premises does trade as Red Sky Lounge. The officer has been inside the premises and they have several large loudspeakers through which they amplify music (N.T. 36).

#### CONCLUSIONS OF LAW:

On March 9, 10, 15, 16, 21, 29 and April 13, 2013, 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).

#### PRIOR RECORD:

Licensee has been licensed since January 15, 2013, and has no record of prior violations.

#### DISCUSSION:

This Licensee has only been at this location since January of 2013 and since that time, Licensee has been disturbed by music on several occasions when sleeping in his bed. He can hear the music coming from the location, which is a considerable distance away, and sometimes through his soundproof windows. While the Licensee is in a location with other clubs and other businesses, neighbors still have a right to peaceful enjoyment of their residences and a reasonable degree of quietness, particularly at times when they would normally be attempting to sleep.

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Under the circumstances, a monetary penalty shall be imposed. It would behoove Licensee to take additional measures so as to contain the music within the boundaries of their 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.

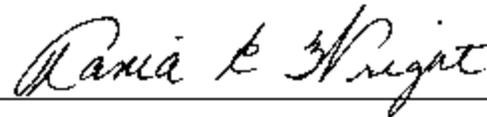
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Bricheasio, Inc., License Number R-AP-SS-EHF-7925, pay a fine of Five Hundred Dollars (\$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 23<sup>RD</sup> day of APRIL, 2015.



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 - 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.

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