

Mailing Date: JUN 02 2015

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

PENNSYLVANIA STATE	:	In re Citation No. 13-1574
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-460632
	:	
v.	:	PLCB LID No. 64843
	:	
1235 PALMER, INC.	:	PLCB License No. R-AP-SS-11093
1235 E. PALMER ST.	:	
PHILADELPHIA, PA 19125-3307	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE COUNSEL: Edward A. Taraskus, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 13, 2013. There are two counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(34), on March 27, 28, April 25, 26, May 9, 22, 23, 29, 30, June 4 and 5, 2013, by permitting the use on the inside and/or outside of the premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond its property line.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-471, on March 27, 28, April 25, 26, May 9, 22, 23, 29, 30, 31, June 1, 2, 4, 5 and 6, 2013, by operating the licensed establishment in a noisy and/or disorderly manner.

A hearing was held on May 8, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On May 8, 2013, liquor enforcement officers visited the licensed premises at 11:00 p.m. and saw that music from a jukebox was playing through loudspeakers in various serving areas of the premises. When the officers left the premises, at 12:05 a.m. they heard the loudspeakers outside at a distance of 100 feet beyond Licensee's property line (N.T. 7-9).

2. The officers visited again on June 13, 2013, but there were no violations. There was another visit between these two dates, but no violations were seen on that date, either (N.T. 10-11).

3. There is a public park alongside Licensee's premises. A liquor enforcement officer spoke to Licensee's corporate officer about a complaint of disturbance from loudspeakers at the

premises, and found that he was cooperative. There were no other complaints received during this investigation. The patrons seen during the visit of June 13 were orderly (N.T. 11-12).

4. A month or so later (after the investigation closed) a liquor enforcement officer acting as a mediator met with Licensee's corporate officer and the person who complained. The result was that Licensee's corporate officer gave the complainant his phone number so that she could contact him directly if any issues arose, whereupon a resolution would be made. (N.T. 13).

5. The complainant resides on East Cabot Street, in the Fishtown neighborhood. This is around the corner from the licensed premises. There is a gap between buildings on the other side of the street from the complainant's residence, so that there is nothing but vegetation between the residence and the licensed premises (N.T. 15-17).

6. The complainant's complaint is that loud music and patrons talking and making other noise disturbs her and her family at all hours of the day, particularly in the upstairs bedroom facing the street. She can understand entire conversations taking place in Licensee's outdoor serving area. On Wednesday, March 27, 2013, the disturbance began at about 9:00 p.m. and continued until 2:00 or 2:30 a.m. the next day. She called the bar and asked for the owner, but there was no resolution. The complainant characterized the sound as laughter and obnoxious drunk people talking and cursing (N.T. 16-18).

7. On April 25, 2013, the complaint was loud music from the jukebox and people yelling and cursing, being obnoxious, from about 7:00 p.m. until 1:00 or 1:30 a.m. Again she called the premises, but got no resolution. The same thing happened again, with the same result, on the night of May 22-23 and on Friday, May 31, 2013 (N.T. 18-20).

8. A log kept by the complainant documents additional disturbances on March 27-28, May 29-30, June 1, 4, and 5, 2013. On occasion the complainant called the police, but got the impression they were sick of hearing from her, as they told her to take it up with the LCB (N.T. 20-23, Exhibit B-3).

9. Because of the disturbances she has documented, the complainant has trouble sleeping. She has found it necessary to turn up the volume on her own television set so as to hear it over the sound coming from the licensed premises (N.T. 27).

10. The complainant is also the person who reported being disturbed in April, 2012, which resulted in a previous citation, No. 12-0908. The parties (the Bureau and the Licensee) stipulated to the facts in that case, and Judge Wright adopted their recommendation for a \$500 fine. After that case was adjudicated, the complainant saw no change, with the problem continuing until as recently as May 3, 2014 (N.T. 29-30, OALJ Docket).

11. Licensee operates as a full-service restaurant, with menus for brunch and dinner offering a wide variety of food and drink. Photographs of the licensed premises from the front show that it is a freestanding two-story brick structure in the style of a row house. Seen from the street, the public park and playground adjoins the premises on the right. Photographs of the interior show a long bar and dining room with wooden benches on one wall and several windows in the opposite wall, a brick floor and a tin ceiling in the style of many old Philadelphia establishments. Photographs of the outside dining area show a number of tables equipped with umbrellas on a brick

floor, with a potted plant and a full-size wall on one side, and on the other privacy screens and a chain-link fence with slats partially obscuring the view beyond (Exhibits L-1, L-2, N.T. 33-37).

12. Licensee blames the behavior of people in the public park for some of the problems experienced by the complainant. The park has been open at all hours and has become a hangout for teenagers, with people drinking and fighting, cursing, throwing bottles, and insulting Licensee's customers as "F'in yuppies." Photographs from the second floor of Licensee's outdoor serving area show that a number of neighboring residences have open back yards closer to the licensed premises than the complainant's home (N.T. 37-40, Exhibit L-2).

13. Photographs from the second floor of Licensee's outdoor serving area show an awning covering a portion of it and an acoustic barrier which was erected all around the outdoor café. Licensee has received no reports of disturbance from anyone other than the complainant in this case. A sign in the outdoor serving area reminds customers to "Please be considerate of our neighbors." A contract with Acoustiblok, Inc., of Tampa, Florida, documents the purchase of two rolls of their product, 4.5' x 60' on April 1, 2014. A cancelled check for the cost of labor documents the installation of this product in the café on April 19, 2014 (N.T. 40-42, Exhibit L-3).

14. After the violation in April, 2012, Licensee attempted to solve the problem by removing an outdoor speaker and keeping the doors to the interior portion of the premises closed. Staff have been reminded to check to see that loudspeakers cannot be heard off the premises. There are now only two loudspeakers, one in the bar and one in the dining room. Although once there was live music at the premises, this has not been done since 2011. There is no dance floor (N.T. 44-48).

15. Licensee has not been contacted by Philadelphia police about any complaints of music, loud noise, or loud patrons. It is an urban area, and there are other sources of noise. The public park is farther from the complainant's residence than the licensed premises. The photograph showing the chain-link fence, mentioned in finding #11 above, depicts the area as it is today. The window and building which can be seen through the fence belong to another neighbor (N.T. 59-70).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since April 25, 2011, and has had prior violations as follows:

In re Citation No. 12-0908. \$500.00 fine.

1. Loudspeakers. On 12 dates between April 15 and 29, 2012.
2. Noisy and/or disorderly operation. On 12 dates between April 15 and 29, 2012.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type. The two counts are merged for penalty purposes.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 1235 Palmer, Inc., License No. R-AP-SS-11093, shall pay a fine of six hundred dollars (\$600.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 22nd day of MAY, 2015.



David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

Detach Here and Return Stub with Payment – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or a check drawn on the account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail it, 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
and look under LEGAL/Office of ALJ for instructions.