

Mailing Date: JAN 06 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1734
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W09-461517
	:	
WEIMAR RESTAURANT INC.	:	
64 E. LINCOLN AVE.	:	PLCB LID - 58275
HATFIELD PA 19440-2543	:	
	:	
	:	PLCB License No. R-AP-SS-EHF-16012
	:	
MONTGOMERY COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, ESQ.

FOR THE LICENSEE:

**ROBERT WEIMAR
PRO SE**

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 30, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Weimar Restaurant, Inc., License Number R-AP-SS-EHF-16012 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, April 16, 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 June 22 and July 6, 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. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises relative to an anonymous complaint on May 10, 2013 of sales to visibly intoxicated persons. The officer was assigned to this investigation on May 13, 2013 and made a visit to the premises on May 24, 2013, but found no violations at that time. On June 7, 2013, another anonymous complaint was logged, alleging loudspeaker violations. The officer made subsequent visits to the premises on June 22, July 6 and July 18, 2013 (N.T. 16-18).

2. On Saturday, June 22, 2013 at approximately 10:00 p.m., an undercover Bureau officer, in training, entered the outside patio of the licensed premises. She was accompanied by another Bureau officer. The officer heard music, at a low level, through speakers mounted on the patio. The music grew progressively louder through the night. The officers sat on the patio for a time and then entered the premises. They remained on the premises for approximately two hours (N.T. 9-11).

3. At approximately 11:40 p.m., the officer exited from the premises. In the parking lot, the officer could hear music emanating from within the premises at that time. The officer then surveyed the area surrounding the premises, walking to an assisted living facility, approximately two hundred eighty nine feet from the premises' property line. The officer then walked in the opposite direction, approximately five hundred feet to 29 Popular Street and was still able to hear music emanating from the licensed premises (N.T. 11).

4. The officer then re-entered the premises to confirm the source of the music. The officer observed that a disc jockey, known as DJ Missy, played music through a laptop computer that was electronically amplified through loudspeakers mounted in the corners of the ceiling. The officer proceeded to the outside patio area where she observed the same music she heard inside was being electronically amplified in that area through approximately four loudspeakers. The officer then departed from the licensed premises (N.T. 11-12).

5. On Saturday, July 6, 2013 at approximately 11:00 p.m., the officer arrived at the licensed premises. The officer could hear loud music emanating from within the premises in the premises' parking lot. The officer conducted a sound check of the area surrounding the premises, again walking to the residential facility, at approximately two hundred eighty nine feet from the premises. At this distance, the officer could still hear the song *Super Bass* by Nicki Minaj. The officer again walked in the opposite direction to a distance of approximately five hundred feet from the premises' property line. From there, she heard music emanating from within the premises. She heard the song *Tootsie Roll* by Sixty Nine Boyz (N.T.12-13)

6. The officer then entered the premises. The officer observed DJ Missy playing music through a laptop computer that was electronically amplified through approximately ten loudspeakers mounted in the corners of the ceiling. The officer observed that all the doors and windows to the premises were closed; however, the back door was being opened and closed as people entered and exited the patio area. The officer proceeded to the outside patio area where she observed the same music she heard inside was being electronically amplified in that area through four loudspeakers. At approximately 11:20 p.m., the officer departed the licensed premises (N.T. 12-14).

CONCLUSIONS OF LAW:

On June 22 and July 6, 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, in violation of Section 493(34) of the Liquor Code, 47 P.S. §4-493(34).

PRIOR RECORD:

Licensee has been licensed since September 10, 2007, and has a record of prior violations as follows:

In Re:

Citation No. 09-2061. \$400.00 fine.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
May 17, 2009.
2. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m.
May 28, 2009.

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DISCUSSION:

Licensee indicated his belief that the complaints were vindictive and not the result of someone who was aggrieved by operations at the premises. Licensee stated that there have been no issues brought to him by the local police. Licensee presented an unsworn statement from a person who alleges that they are a close neighbor and that they have had no problems with noise from the premises. However, the officer from the Bureau was able to hear *loud* music from the premises at substantial distances from the premises.

Licensee supposedly has a device to limit the volume of amplification of the music. Licensee is obliged to take whatever additional steps are necessary to prevent music and noise from his premises from being heard off his premises.

Licensee has one prior citation from 2009, involving failing to vacate timely the premises and unlawful discounting practices. Under the circumstances, a moderate monetary 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.

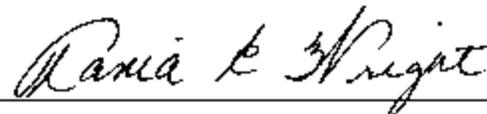
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Weimar Restaurant, Inc., License Number R-AP-SS-EHF-16012, pay a fine of Three Hundred Dollars (\$300.00) 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 22ND day of December, 2014.



Tania E. Wright, J.

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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

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 and look under LEGAL/Office of ALJ for instructions.

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