

Mailing Date: JUN 08 2015

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

PENNSYLVANIA STATE
POLICE, BUREAU OF
LIQUOR CONTROL ENFORCEMENT

In re Citation No.	BLCE Incident No.
13-1891	W01-458651
14-0303	W01-469901

Consolidated for Adjudication Only

v.

947 ADK ENTERPRISES, INC.
947 E. PASSYUNK AVE.
PHILADELPHIA, PA 19147-2943

PLCB LID No. 53790
PLCB License No. R-AP-SS-9115
Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE COUNSEL: Leonard F. Reuter, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued these citations on September 24, 2013, and February 25, 2014. There are two counts in each citation.

The first count of each citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(34), by permitting the use on the inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond Licensee's property line.

The second count of each citation alleges that Licensee violated the Liquor Code, 47 P.S. §4-471, by operating the licensed establishment in a noisy and/or disorderly manner.

In Citation No. 13-1891, each count alleges violations on March 29, 30, 31, April 1, 5, 6, 7, 10, 11, 12, 13, 14, 20, 21, May 4, 11, 18, 22, 25, 26, 27, June 19 and 20, 2013,

In Citation No. 14-0303, each count alleges violations on November 20, 21, 22, 23, 27, 29, 30, December 1, 5, 6, 7, 10, 11, 12, 13, 2013, January 3, 4, 7, 8, 11, 12 and 14, 2014.

A hearing was held on June 19, 2014, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. Bureau records show that the investigation which resulted in Citation No. 13-1891 began on March 15 and ended on June 21, 2013. The investigation which resulted in Citation No. 14-0300 began on November 4, 2013, and ended on January 18, 2014.

2. A woman who lives next door to the licensed premises complained to the Bureau about loudspeaker violations. An officer of the Bureau visited her on March 29, 2013, to let her know that an investigation had begun and to give her a noise log used by the Bureau. On the same date the officer attempted to speak to Licensee's president about the matter, and notified Licensee's employee of the investigation (N.T. 8-9).

3. Liquor enforcement officers visited the licensed premises at 9:00 p.m. on Saturday, March 29, 2013. They did not hear music outside. Inside, they found a jukebox playing on the first floor, and musical equipment on the second floor. Music was playing at a volume which could not be heard outside (N.T. 10).

4. The investigating officer contacted the woman who had complained on April 4, 2013, to let her know that he was working on the investigation, and to see if she had any more issues. He asked for the noise log left earlier, but she did not want to provide it, saying she wanted to keep it for a longer time. On the same date the officer spoke with Licensee's president, who acknowledged being aware of the complaint, and said he knew who it was from (N.T. 11-12, 17-18).

5. The officer conducted surveillance at the premises on April 18, May 5, and June 6, 2013, and on each date did not hear any music outside. On June 13, 2013, he visited the home of the woman who complained; she shares a common wall with the licensed premises. The woman showed the officer through her home, and pointed out the place where she was able to hear music coming through the walls. The officer did not hear any music during this visit, which was at about 7:00 p.m., and the licensed premises was open for business (N.T. 12).

6. On June 20, 2013, the officer received the noise logs filled out by the woman who complained. The next day, the officer conducted surveillance at the premises and did not hear any music coming from it (N.T. 12-13).

7. The woman whose complaint resulted in Citation No. 13-1891 complained to the Bureau again, and a second investigation was assigned to a different liquor enforcement officer, who contacted her and arranged to drop off a noise log on November 20, 2013. On December 18, and again on December 20, 2013, the officer conducted surveillance at the premises and on each date did not hear any music outside (N.T. 20-22).

8. Officers visited the premises again on January 5, 2014, at 1:00 a.m. and did not hear any music outside (N.T. 22-23).

9. The woman who complained moved to the property she now occupies in October, 2010. She had previously lived there during the period 1996-2000. The property was conveyed to her by her father in 2009. It is an attached dwelling, with common walls adjoining the licensed premises on the first and second floors (not the attic) of one side, and another residence on the other side. The woman was disturbed by noise coming from the licensed premises at the time she moved in, but she didn't know what to do other than to call the cops and let them know of the disturbance.

The property had belonged to her parents. They knew the previous owner of the licensed premises; the woman was not sure when the present owner took over (N.T. 23-30, 46-47).

10. The woman had no knowledge as to whether her parents or their tenant ever complained about disturbances from the licensed premises (N.T. 45-49).

11. The woman kept a log of the disturbances, which records music and “trembling sounds” heard through the walls of the bedroom which adjoins the licensed premises, beginning at various times as early as 9:30 p.m. and ending as late as 2:05 a.m., on March 29, 30, 31, April 5, 6, 10, 12, 13, 20, 21, May 4, 11, 18, 22, 25 and 26, 2013. On June 16, 17 and 18, 2013, the disturbance recorded was attributed to Licensee’s customers talking outside the woman’s door and sitting on her steps. On June 19, 2013, the disturbance was ascribed to “speakers from the bar” (Exhibit B-5).

12. The woman perceived that the disturbances started early in the evening on Wednesdays, Fridays, Saturdays, and sometimes Sundays and Mondays. The noise would get louder and louder throughout the evening, to the point where she could really hear the music. Mostly, the noise was music and vibrations, what she called “trembling sounds.” After 2:00 a.m. she would hear voices from people yelling or conversing. She also complained that customers of the bar were always outside yelling and drinking on her doorstep (N.T. 31-33).

13. The woman described the effect on her life. She is a college student who also works. She comes home at 5:00 p.m. and wants to be able to do the things that people do: come home, cook, eat dinner, be able to get her work done, put her child to sleep on time, get sleep and wake up early in the morning. She has to rise at 5:30 or 6:00 a.m. and cannot do that because she has to wait until 2:00 a.m. so that she can go to bed and so that her child can sleep. She complains that many of Licensee’s customers are on her property yelling, drinking on her doorsteps. “They throw up. You don’t clean it. I have to clean it. This is like Wednesday --- it was happening for a very long time. It kind of stopped and then started back again last week. I called the cops last week three times.” (N.T. 39-40).

14. A second log kept by the woman who complained, regarding Citation No. 14-0300, documented disturbances on November 20, 22, 27, 29, 30, December 1, 5, 6, 7, 8, 10, and 12, 2013, consisting of loudspeaker sounds, crowd voices and music in the early morning hours, usually ending at 2:00 a.m. On December 7, 2013, the log records the sound of talking and moving furniture between 3:00 and 4:00 a.m. (Exhibit B-6).

15. The logs maintained by the woman have a column labeled “police contacted?” The “yes” box in that column has been checked for the first five dates in Exhibit B-5, but “no” has been checked for the remaining 15 entries in that exhibit. All of the dates involved in No. 14-0303 were checked “no” in that column except for January 14, 2014. The woman explained that, although police would respond to the licensed premises and enter it, there was never an improvement in the sound, and the police would leave without taking action. No one from law enforcement has been inside the complainant’s residence at any time when sound could be heard coming through the common wall (N.T. 50-56, Exhibits B-5 and B-6).

16. The owner of this licensed corporation opened the establishment for business in early 2005 and has been operating it since. The owner believes that the license dates from the end of Prohibition, and that the second floor has been licensed since 1947. There was an existing sound system; the jukebox and the second floor speakers were changed in 2005, but not since. During the

time period March 2013 to January 2014 the owner was aware of the complaints, and provided his cell phone number to the complainant, through the liquor enforcement officer (N.T. 61-64).

17. Following the adjudication of Citation Nos. 05-1817 and 05-2499, in the summer of 2005, Licensee did renovations to the second floor to help soundproof it, including acoustic tiles and relocating the speakers (N.T. 65-67).

18. The logs maintained by the woman who complained document disturbances from loudspeakers inside the second floor of the licensed premises on Sundays, specifically March 31, April 21, May 26, December 1, 2013. However, on all of these Sundays the second floor bar room was closed, with no staff, patrons or loudspeakers in operation (N.T. 72-75, 91-92).

19. Although officers of the City of Philadelphia Police Department have visited the premises on numerous occasions, Licensee has never been cited by violation of the city's noise ordinance (N.T. 76-77).

20. The second floor of the licensed premises is separated from the first floor by a fire door, at the top of the staircase, which is closed when the second floor is not in use. The neighbor whose complaint resulted in the 2005 citations lived on the other side of the licensed premises from the neighbor whose complaints resulted in these cases (N.T. 87-90).

CONCLUSIONS OF LAW:

Citation No. 13-1891

Licensee violated the Liquor Code, 47 P.S. §4-493(34), by permitting the use on the inside of the licensed premises of a loudspeaker whereby music or other entertainment could be heard beyond Licensee's property line, on March 29, 30, April 5, 6, 10, 12, 13, 20, May 4, 11, 18, 22, 25 and June 19, 2013.

Licensee violated the Liquor Code, 47 P.S. §4-471, by operating the licensed establishment in a noisy and/or disorderly manner on June 16, 17 and 18, 2013.

Citation No. 14-0303

Licensee violated the Liquor Code, 47 P.S. §4-493(34), by permitting the use on the inside of the licensed premises of a loudspeaker whereby music or other entertainment could be heard beyond Licensee's property line on November 20, 22, 27, 29, 30, December 5, 6, 7, 10, 12, 2013, January 3 and 7, 2014

Licensee violated the Liquor Code, 47 P.S. §4-471, by operating the licensed establishment in a noisy and/or disorderly manner on December 7 and 8, 2013.

PRIOR RECORD:

Licensee has been licensed since February 24, 2005, and has had prior violations as follows:

In re Citation No. 05-1817 and 05-2499 (consolidated). \$3,000.00 fine.

1. Loudspeakers could be heard outside.
2. Noisy and/or disorderly operation.
3. Discounting alcoholic beverages in excess of 2 hours in a business day.
4. Discounting between 12:00 midnight and 2:00 a.m.
5. Officer of Licensee consumed alcoholic beverages while tending bar.
6. Sex discrimination.

In re Citation No. 07-0781. \$500.00 fine.

1. Loudspeakers could be heard outside. February 7 and March 7, 2007.

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 dates on which I have found violations in each case are the dates I find to be supported by the complainant's log and testimony, evaluated in the light of Licensee's evidence of limited operations in the second floor on Sundays.

Under the circumstances of this case there is little distinction between the two counts – whether the source of the disturbance was a loudspeaker or something else is less important than the fact that a disturbance occurred – and therefore in each case I will merge the two counts for penalty purposes.

Licensee argued that the harm shown by the evidence in this case is a private harm, as there was no showing of disturbance to the neighborhood generally, and therefore this matter should be treated as a private nuisance. I do not agree. The complainant, no less than anyone else, is entitled to the peaceful enjoyment of her property.

A sixteen-foot wide nineteenth century brick building, attached on both sides to residences of the same vintage and construction, is a strange place to locate a liquor license with an amusement permit. The laws of physics being what they are, it is difficult to see how Licensee could avoid disturbing the adjacent neighbors while still participating in the entertainment business.

This premises is situated and equipped to be a sleepy neighborhood tavern without amusements, not a nightclub. If Licensee expects to retain this license for the long term in the face of repeated violations of this nature, it would be well advised to reduce the volume on all of its sound equipment by one-half.

In each of these citations, penalty for both counts as merged will be a fine of \$600.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 947 ADK Enterprises, Inc., License No. R-AP-SS-9115, shall pay a fine of twelve hundred dollars (\$1,200.00) 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 28TH 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.