

Mailing Date: JUN 08 2015

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

PENNSYLVANIA STATE	:	In re: Citation No. 13-2293
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-458095
	:	
v.	:	PLCB LID No. 50570
	:	
MANPANTS, LLC	:	PLCB License No. R-AP-SS-3735
1201-05 FRANKFORD AVE.	:	
109 EAST GIRARD AVE.	:	Philadelphia County
PHILADELPHIA, PA 19125-3905	:	

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 November 26, 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 May 9, 12 and 13, 2013, 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 alleges that Licensee violated the Liquor Code, 47 P.S. §4-471, on May 9, 12 and 13, 2013, by operating the licensed establishment in a noisy and/or disorderly manner.

A hearing was held on September 23, 2014, in Plymouth Meeting, Pennsylvania.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period March 3 through June 8, 2013, and sent it written notice of the results on June 28, 2013 (N.T. 10, Exhibit B-1).

2. The Bureau issued this citation on November 26, 2013, and a copy of it was mailed to Licensee on that date (N.T. 10-11, Exhibit B-2).

3. During the evenings of May 9, 12 and 13, 2013, a family whose residence is adjacent to Licensee's property was disturbed by loud, amplified music inside their home coming through the wall which their home shares with the licensed premises (N.T. 22-29, 69, Exhibit B-8).

4. A representative of New Kensington Community Development Corporation who has been with them eight and one-half years has not heard any complaints against Licensee during that time. Licensee has been responsive to the community, in her opinion (N.T. 89-92)

5. A neighbor of the licensed premises, who has lived directly across the street from it for ten years, has not heard amplified music or disturbances emanating from the premises during that time. She feels that Licensee's owners could be approached if there were a problem (N.T. 94-95).

6. After Licensee had been in business a few years, it acquired the vacant lot at 1205 Frankford Avenue and constructed a new building there, between the existing licensed premises and the residential building at 1207 Frankford Avenue. The purpose was to provide a fire escape for the main building and to serve as an insulator between Licensee's live music venue and the adjacent residence. There are no loudspeakers inside 1205 Frankford Avenue (N.T. 97-100).

7. The cinder block wall underneath the new construction was filled with concrete. The interior of the music venue has a main loudspeaker which points away from the wall that is common with the neighboring residence. The intent was to keep all sound contained within the building. Roxul brand mineral wool was used in the construction. There is a heavy curtain surrounding the stage with additional sound insulation panels behind it (N.T. 100-103, Exhibit L-1).

8. As part of the construction, a stud wall was erected against the common wall, and filled with insulation. This wall was covered with two layers of 5/8" sheet rock, with additional insulating panels on top of that. There is a gap between the stud wall and the masonry common wall, intended to prevent the walls from being coupled acoustically. (N.T. 103-105, Exhibit L-1).

9. Licensee has requested the opportunity to enter the residence of the complainant at a time when sound could be heard, to attempt to find a solution to the problem, or to allow a sound engineer to do so, but this has not been allowed by the complainant. When Licensee's members learned that a liquor enforcement officer had heard music inside the complainant's residence, they were surprised, because the area adjacent to the rooms in which the music was heard is not where the band is, it is just extra space near the bathrooms (N.T. 106-107, 113).

10. Based on what they learned, Licensee's members realized they could, without any cost to their business apart from the cost of construction, add a new wall in that area, dividing the space in half and using the space adjacent to the complainant's residence for storage, thus providing additional dead air insulation (N.T. 107-108, Exhibit L-1).

11. An architect's plan for the construction which took place at the licensed premises specifies in the area adjacent to the complainant's residence "2 x 6 16 inch stud wall with sound insulation and two layers of 5/8" type 'x' drywall from 6" block wall at second floor level to roof deck above." (N.T. 110, Exhibit L-2).

12. When Licensee ordered the construction of the new building in the space between its original premises and the complainant's residence, its contractor recommended pocketing the steel joists for the new construction into the existing party wall. When their neighbor complained about this, Licensee's contractor modified the construction, cutting off the beams (which were then supported by the block wall) and sealing the holes where they had been pocketed. A photograph confirms that there is now a small gap between the buildings (N.T. 114-117, 138-139, Exhibit L-3).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since July 18, 2003, and has had prior violations as follows:

In re Citation No. 07-2250. \$100.00 fine.

1. Failed to maintain coil cleaning records. August 24, 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 two counts are merged for penalty purposes.

I am persuaded that Licensee has made a good faith effort to operate its premises in a way that does not disturb the neighborhood, and that it has responded reasonably to the complaints received from the adjacent neighbor.

There is one further suggestion I might make, which Licensee should seriously consider if it wants to eliminate this problem entirely: (1) go to the main control panel of the sound system in the licensed premises and observe the numerical setting of the volume knob. (2) divide that number by 2 to arrive at the new setting. (3) adjust the knob accordingly.

I suggest this experiment in all seriousness, because it is my personal opinion that establishments such as Licensee's usually have the sound system turned up far louder than it needs to be, for reasons I do not understand. It might be useful to find out whether any of the customers complain, now that they can converse with each other in a normal tone of voice.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Manpants, LLC, License No. R-AP-SS-3735, shall pay a fine of two hundred dollars (\$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 27TH day of MAY, 2015.


David L. Shenkle, J.

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 business or trust 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.