

Mailing Date: JUN 09 2015

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

PENNSYLVANIA STATE	:	In re Citation No. 14-1307
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-471367
	:	
v.	:	PLCB LID No. 57325
	:	
MHJR, INC.	:	PLCB License No. R-AP-SS-EHF-7167
795 N. 24 th ST.	:	
PHILADELPHIA, PA 19130-2540	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 8, 2014. There are three counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-499(a), on December 28, 2013, by permitting patrons to possess alcoholic beverages in and/or remove them from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The second count alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(34), on December 28, 2013, February 21 and March 21, 2014, 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 third count (as amended by agreement, N.T. 5-6) alleges that Licensee violated the Liquor Code, 47 P.S. §4-471, on December 28, 2013, and March 21, 2014, by operating the licensed establishment in a noisy and/or disorderly manner.

A hearing was held on February 24, 2015, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On December 28, 2013, at 1:05 a.m., a liquor enforcement officer parked about a block and a half away from the licensed premises. As he approached the premises he heard music and people. At the intersection of Bucknell and Brown Streets the officer could see approximately 50 patrons outside the licensed premises, smoking, laughing and yelling. He entered the premises and saw that the source of the music was loudspeakers being used by a disk jockey (N.T. 8-9).

2. At 2:00 a.m. a bartender announced "last call." There was an altercation between a patron and a bartender, who pushed and shoved each other. A group of people then all pushed both the bartender and the patron outside. The bartender re-entered the premises immediately and placed a phone call, which required only three numbers. He spoke to someone on the phone and then began cleaning up the bar. A few minutes later he went back outside, where some patrons had gathered, including the patron the bartender had had words with; further words were exchanged. Then red and blue flashing lights were seen outside (N.T. 9-10).

3. The officer heard the bartender and the patron yelling at each other; the bartender was asking the patron to leave when the police showed up. The bartender came back inside and resumed cleaning up behind the bar. There were still 15 to 20 patrons in the premises at 2:20 a.m. when a woman approached another woman at the corner of the bar and punched her in the face, for no apparent reason. The woman who was punched then threw a beer bottle at the aggressor. The bartender rushed over and broke the fight up. The woman who was punched was escorted outside. A short time later an older woman entered the premises and punched the woman who had started the altercation; she was then escorted outside (N.T. 11).

4. Based on the conversation, the officer could tell that the older woman was the mother of the woman who was punched initially. The thrown beer bottle did not hit anyone, just the floor. In these four altercations, the men did nothing more than shove; the women threw punches (N.T. 12).

5. At the time the mother came into the premises there were patrons outside whose voices were loud, that is, they could be heard inside the premises, but there were no other altercations. Officers attempted to make an after-hours purchase, but were refused service at 2:25 a.m. The bartender came back into the premises and asked everyone to leave at approximately 2:40 a.m. At that time the officer who testified believes he was in possession of alcohol. The officer who was with him had possession of an empty bottle, but it was not known if there was any beer left in it. As to the three patrons apart from the officers who were left, the officer did not recall if they were in possession of alcoholic beverages at that time (N.T. 13-14).

6. Officers made three additional visits to the premises following the December 28 visit, during which no violations were observed (N.T. 15).

7. On March 21, 2014, at 11:59 p.m., liquor enforcement officers arrived in the area of the licensed premises and parked in the same location as on the December 28 visit. They heard music emanating from the premises at a distance of 150 feet and saw six patrons outside smoking, talking with loud voices. When they entered the bar they saw that the source of the music was two large loudspeakers mounted on tripods, as well as four wall-mounted speakers, being used by a DJ. The officers left the premises at 1:00 a.m. and again heard the loudspeakers outside (N.T. 16, 27).

8. Since these incidents came to light, the father of Licensee's president has become involved in the business, to help control the premises. After the December 28, 2013, incident, he came to the licensed premises at about 2:50 a.m., after the altercations were over, and fired the bartender involved. Additional security has been brought on, so the situation is more under control. Efforts are being made to control the noise and the behavior of the clientele (N.T. 29-44).

CONCLUSIONS OF LAW:

Licensee violated the Liquor Code, 47 P.S. §4-499(a), on December 28, 2013, by permitting patrons to possess alcoholic beverages in that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

Licensee violated the Liquor Code, 47 P.S. §4-493(34), on December 28, 2013, and March 21, 2014, by permitting the use on the inside of the licensed premises of a loudspeaker, whereby the sound of music could be heard beyond Licensee's property line.

The evidence did not show that Licensee violated the Liquor Code, 47 P.S. §4-471, on December 28, 2013 and March 21, 2014, by operating the licensed establishment in a noisy and/or disorderly manner on a regular basis, as required by applicable case law.

DISCUSSION:

As to the third count of this citation, the result is controlled by *In re Ciro's Lounge, Inc.*, 24 Pa. Cmwlth. Ct. 589, 358 A.2d 141 (1976). This was an appeal by the licensee from an order of the Philadelphia Common Pleas Court affirming an order of the Board revoking the liquor license for operating the premises in a disorderly manner. The sole question presented was whether a single act of disorderly conduct was a sufficient basis for the penalty. There was no factual dispute that the licensee's proprietor shot a boisterous patron while attempting to remove him following a dispute.

The court in *Ciro's Lounge* quoted extensively from *Petty Liquor License Case*, 216 Pa. Super. Ct. 50, 258 A.2d 874 (1969). The *Petty* court reviewed the history of noisy and disorderly operation in the context of the "other sufficient cause" provision of 47 P.S. §4-471(a), and found that a penalty for noisy and disorderly operation could be imposed on that basis.

The court in *Ciro's Lounge* agreed with the holding in *Petty*, but added that "where noise and disorderly conduct are isolated, and not of a relatively continuous nature causing disturbance and effrontery to the public welfare, peace and morals, Section 471 should not be the basis for suspension or revocation of a liquor license." 358 A.2d at 143.

In re Revocation of Restaurant Liquor License Issued to Arthur A. Banks, 59 Pa. Cmwlth. Ct. 443, 429 A.2d 1279 (1981) the court reversed a penalty based on noisy operation because only one instance was shown, relying in *Ciro's Lounge*.

In this case the evidence related only to a single incident, and it was therefore insufficient to support the allegation of the third count.

PRIOR RECORD:

Licensee has been licensed since July 3, 2007, and has had prior violations as follows:

In re Citation No.12-0621C. \$1,250.00 fine and R.A.M.P. – certification mandated.

1. Sales to a minor. February 23, 2012.

In re Citation No. 13-0358. \$500.00 fine.

1. Failed to comply with an order mandating R.A.M.P. – certification. December 18, 2012, through January 16, 2013.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years. January 16, 2013.

In re Citation No. 13-1484. \$400.00 fine.

1. Loudspeakers heard beyond property line. May 4, 24 and 25, 2013.

In re Citation No. 13-2480. \$600.00 fine.

1. Loudspeakers heard beyond property line. October 5, 2013.

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. Penalties are assessed as follows:

Count 1 – a fine of \$50.00..

Count 2 – a fine of \$750.00.

Count 3 – DISMISSED.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, MHJR, Inc., License No. R-AP-SS-EHF-7167, shall pay a fine of eight hundred dollars (\$800.00) 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 29TH 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 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.