

Mailing Date: NOV 04 2015

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

PENNSYLVANIA STATE	:	In re Citation No. 14-2312C
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-483436
	:	
v.	:	PLCB LID No. 56660
	:	
E & J ENTERPRISES, LLC	:	PLCB License No. R-AP-SS-EHF-7922
4501-03 SHEFFIELD AVE.	:	
PHILADELPHIA, PA 19136-3224	:	Philadelphia County

JUDGE SHENKLE
BLCE COUNSEL: Andrew R. Britt, Esq.
LICENSEE COUNSEL: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 25, 2014. There are three counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(1), on October 10, 2014, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one minor, twenty years of age.

The second alleges that Licensee violated Liquor Code, 47 P.S. §4-493(34), on August 10 and 11, 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 alleges that Licensee the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), on September 14, 2014, by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

A hearing was held on Tuesday, September 22, 2015, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On August 10, 2014, a liquor enforcement officer arrived in the area of the licensed premises at 10:50 p.m. and parked his vehicle about 100 feet north of the building. At the location he heard loud music emanating from the licensed premises. He walked to another location about 200 feet away from the premises, where he could still hear the music. He then entered the establishment and saw that the source of the music heard outside was a jukebox, which was

amplifying the music through loudspeakers. When the officer left at 12:40 a.m. (August 11, 2014) he again heard the jukebox outside the premises, at the same distances (N.T. 46-49).

2. There was no other entertainment in the premises that evening apart from the jukebox, and the officer saw no other violations. The door between the inside of the premises and the outside was frequently open, as people continually went out to smoke or meet other people and then returned (N.T. 53-55).

3. Since learning of the loudspeaker problem, Licensee's owner has undertaken building projects to contain the sound in the premises with a vestibule and a separate smoking area, which he expects to prevent a recurrence of this problem (N.T. 56-62).

4. On Sunday, September 14, 2014, liquor enforcement officers entered the licensed premises at 12:40 a.m. and saw a number of bartenders servings 60 or 70 patrons. One of the bartenders informed the officers that alcoholic beverages would no longer be served after 2:00 a.m. At 2:02 a bartender served three shots of liquid the color of pineapple juice. Another bartender served a vodka and cranberry juice. A container of White Lion brand liquor was served at 2:03 a.m. A 2:06 a.m. a "shot girl" was walking around with a tray of "test tube shots." The officer who testified did not know what these test tubes contained, but two were served at 2:06 a.m. and three more at 2:07 a.m. (N.T. 6-8).

5. On October 10, 2014, a man whose birth date was April 17, 1994, who was participating in the Bureau's underage buyer program, purchased a can of beer in the licensed premises. His age was not questioned. After paying and taking possession of the beer, the man walked out of the premises without drinking any of it. A liquor enforcement officer then entered the premises and informed the bartender of the violation (N.T. 8, 29-34, 40).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since November 17, 2006, and has had prior violations:

In re Citation No. 07-2320. \$300.00 fine.

1. Gambling (cards). September 4, 2007.

In re Citation No. 11-1367. \$500.00 fine.

1. Refused access to business records, request made during business hours. May 24, 2011.
2. Failed to keep business records on the licensed premises. June 22, 2011.

In re Citation No. 12-0092. \$1,200.00 fine.

1. Sales after license expired. December 11, 2011.

In re Citation No. 12-0954. \$600.00 fine.

1. Loudspeakers heard beyond property line. April 22 and 26, 2012.

In re Citation No. 13-1694C. \$1,250.00 fine and RAMP certification mandated.

1. Sales to a minor. July 24, 2013.

In re Citation No. 14-0016. \$1,100.00 fine.

1. Permitted entertainment or dancing without an amusement permit.
July 13, 14, September 7, 20 and 21, 2013.
2. and 3. (merged). Loudspeakers heard beyond property line/noisy operation.
July 13, 14, September 7, 20 and 21, 2013.
4. Refilled liquor bottles. September 25, 2013.

DISCUSSION:

The hearing transcript contains what I believe to be a typographical error in the testimony of one witness, concerning the year in which the incidents described in the findings occurred. Based on the testimony of other witnesses, I have found that the incident which became the basis of the first count occurred on October 10, 2014.

Bureau counsel objected to the presentation of witnesses whose identity had not been disclosed in a prehearing memorandum, and when one of them began to describe conditions at the premises on one of the violation dates, his objection was particularly well taken. The rule authorizing the exclusion of evidence which has not been disclosed beforehand is rarely the basis of dispute between counsel, but it will be enforced in appropriate cases.

This is Licensee's third loudspeaker violation and its second sales to minors violation. The incident of after-hours delivery of alcoholic beverages is a first offense, but Licensee was playing with fire when it allowed a server referred to as a "shot girl" to circulate among the customers after 2:00 a.m. A licensee with as extensive a record as this premises has would be well advised to tone down the operation of its business in many ways.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in first and third counts any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in the second count any fine must be in the \$50.00 to \$1,000.00 range.

Since the violations found in the first and third counts are Licensee's third and fourth violations, respectively, of a provision mentioned in 47 P.S. §4-471(b), the law requires that the penalty for those counts include license suspension or revocation. Penalties are assessed as follows:

- Count 1 – a fine of \$1,500.00 plus suspension of license for one day.
- Count 2 – a fine of \$750.00.
- Count 3 – a fine of \$1,000.00 plus suspension of license for one day.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, E & J Enterprises, LLC, License No. R-AP-SS-EHF-7922, shall pay a fine of three thousand two hundred fifty dollars (\$3,250.00) 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.

IT IS FURTHER ORDERED that the Restaurant Liquor License of Licensee, E & J Enterprises, LLC, License No. R-AP-SS-EHF-7922, shall be suspended for a period of two (2) days (including all permits and Licensee Discount Card) BEGINNING at 7:00 a.m. on Monday, December 7, 2015, and ENDING at 7:00 a.m. on Wednesday, December 9, 2015.

Licensee is directed on Monday, December 7, 2015, at 7:00 a.m. to place the enclosed notice of suspension (Form No. PLCB-1925 as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/ Fine Wine & Good Spirits stores.

The Bureau is directed to visit and monitor the premises for compliance with this order.

Licensee is authorized on Wednesday, December 9, 2015, at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Dated this 2ND day of November, 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

In re Citation No. 14-2312C
E & J Enterprises, LLC