

Mailing Date: August 26, 1998

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	Citation Nos. 96-2372, 96-2655 & 97-0231 (Consolidated for Hearing Purposes Only)
v.	:	
	:	
HOMESTEAD RESTAURANT INC. :	:	Incident Nos. W9-150153, T/A HOMESTEAD INN :
W9-152186 & W9-154534 3 VILLAGE ROAD	:	
HORSHAM TOWNSHIP	:	LID - 20329
HORSHAM PA 19044-3812	:	
MONTGOMERY COUNTY :	:	
LICENSE NO. R-AP-SS-19531	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, ESQ.

FOR THE LICENSEE:

THOMAS P. ROGERS, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of citations that were issued on November 13, 1996,

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t/a Homestead Inn
Citation Nos. 96-2372, 96-2655 & 97-0231

December 20, 1996 and February 12, 1997, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Homestead Restaurant, Inc., t/a Homestead Inn, License Number R-AP-SS-19531 (hereinafter "Licensee").

Administrative hearings were held on September 30, 1997, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation. The matters were consolidated for hearing.

The citations are as follows:

Citation No. 96-2372

This citation contains two counts.

The first count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on August 8, 11, 18, 21, September 13, 1996, and on divers other occasions since May 1996, Licensee, by its servants, agents or employes, used, or permitted to be used on the outside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The second count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5503 of the Crimes Code, 18 Pa. C.S. Section 5503, in that on August 8, 11, 16, 18, 21, 22, September 13, 1996, and on divers other occasions since May 1996, the licensed establishment was operated in a noisy and/or disorderly manner.

Citation No. 96-2655

This citation contains two counts.

The first count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on October 16, 18, 24 and 26, 1996, 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 outside.

The second count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5503 of the Crimes Code, 18 Pa. C.S. Section 5503, in that on October 24 and 26, 1996, the licensed establishment was operated in a noisy and/or disorderly manner.

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Citation No. 97-0231

This citation contains two counts.

The first count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on November 1, 8, 14, 15, 22, 29, December 5 and 16, 1996, 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 outside.

The second count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5503 of the Crimes Code, 18 Pa. C.S. Section 5503, in that on November 1 and 8, 1996, the licensed establishment was operated in a noisy and/or disorderly manner.

CITATION NO. 96-2372 COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises, which began on August 15, 1996 and concluded October 3, 1996. The Bureau of Enforcement began an investigation of the licensed premises after receiving a complaint from Mr. Charles Ferrare, who lives in the area of the licensed premises. Mr. Ferrare complained that there was a great deal of noise, loudspeakers and patrons' voices coming from the licensed premises (N.T. 11-12).

2. Officer Stephanie Ebner, from the Bureau of Enforcement, visited the complainant's residence on August 16, 1996. She met with Mr. and Mrs. Ferrare, and other neighbors, in the vicinity of the licensed premises. The neighbors also had complaints of loud music and voices coming from the premises. The officer took statements from the complainant, his wife and other neighbors in the area (N.T. 12-13).

3. Officer Ebner also visited the licensed premises on August 22, 1996 and September 13, 1996. On August 22, 1996 at approximately 6:45 p.m., she entered the licensed premises. She noted that there were from 250 to 300 patrons on the premises. The premises are divided into several different areas. When the officer entered, she went to the inside area. While on the premises, she went to a separate bar on the outside deck (N.T. 14-15 and 30).

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4. The officer noted an intercom system above an archway, in the licensed premise (N.T. 15).

5. On August 22, 1996, the outside deck area off to the right, there was a four piece band, which was performing with electronically amplified instruments and two electric guitars. They were singing through an electronically amplified microphone. The music was being directed through several electronically amplified loudspeakers, which were approximately two feet by four feet in diameter (N.T. 16-17).

6. The outside area of the premises, i.e. the deck, is also licensed by the Pennsylvania Liquor Control Board (N.T. 17).

7. The officer remained on the premises until approximately 8:20 p.m. (N.T. 17).

8. When the officer left the premises, she went to the residence of Mr. and Mrs. Charles Ferrare. When she reached the Ferrare's home, she immediately proceeded to the outside deck.

From the outside deck, she could clearly hear patrons' voices coming from the licensed premises. She did not hear music at that time (N.T. 18).

9. On September 13, 1996 at approximately 9:15 p.m., the officer again visited the licensed premises. The officer went outside onto the deck area, where the band was performing. The band was off to the right in the same area where the band was performing on August 22, 1996 (N.T. 19-20).

10. The officer observed a four piece all male band named "The Daisy Jug Band." The band performed using amplified equipment such as guitars. They also sang through microphones. The band also had utilized amplified loudspeakers in the general vicinity where they were performing. These speakers were approximately two feet by four feet in dimension (N.T. 20).

11. The officer departed the premises at 10:05 p.m. (N.T. 20-21).

12. After departing the premises, the officer returned to the Ferrare's residence. Outside on the deck area, the officer clearly heard patrons' voices. In addition, he heard the song "I Got You Babe" clearly coming from the licensed premises. The officer could hear every word of the song (N.T. 21).

13. The officer heard patrons screaming and patrons singing, while at the Ferrare's residence. The officer couldn't hear the band singing, but could hear music that the band was playing. The officer could not hear the music well, because of the volume of the patrons' voices. The noise heard by the officer was extremely loud, as though the patrons on the premises were sitting right on the Ferrare's step (N.T. 22-23).

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14. There are office buildings located around and in front of the licensed premises. As you are standing on the outside deck of the premises, there is a large open field used for recreational purposes. There is also a pond and across the pond there are residential homes (N.T. 26-27).

15. The complainant, Mr. Ferrare, resides at 7 Pine Oak Lane in Horsham. His residence is 250 to 300 feet from the deck area of the licensed premises. A lawn and water separates his home from the licensed premises (N.T. 19, 33-34).

16. Mr. Fricker, the Licensee, was the previous owner of the property where Mr. Ferrare's house is located. Mr. Fricker built the house in which Mr. Ferrare lives (N.T. 48).

17. Mr. Ferrare has a deck outside his home which faces the water and the deck area of the restaurant (N.T. 35).

18. Mr. Ferrare filed a written complaint on August 16, 1996 alleging that there was loud music being played out on the deck beginning at approximately 5:00 in the evening. He also said there were large crowd noises that went on during the night (N.T. 85).

19. In 1996, Mr. Ferrare was disturbed by noise from the licensed premises the entire spring and summer from mid-May all the way through the date of the complaint (N.T. 35-36).

20. During 1996, he alleged that every Wednesday, Thursday, Friday, Saturday and Sunday, he heard the noise. He does not recall with certainty whether Monday and Tuesday nights were included, but was clear that the noise continued Wednesday through Sunday (N.T. 36).

21. Mr. Ferrare made several calls to the Licensee during this period of time. Mr. Ferrare expressed enormous frustration after days and days of hearing this noise (N.T. 36-37).

22. Mr. Ferrare alleged that the music and noise began at 5:30 p.m. and built momentum over the next couple of hours until it reached a "crescendo" that was unbearable at approximately 10:00 or 11:00 p.m. (N.T. 37).

23. Mr. Ferrare indicated that there were rock bands on the deck of the licensed premises (N.T. 37).

24. The music would end anywhere from 11:00 p.m. to 12:00 a.m. and sometimes later (N.T. 38).

25. The crowd noise did not cease until approximately 1:00 to 2:00 in the morning (N.T. 38).

26. As a result, the residents were unable to use the outdoor portion of their homes and a portion of the indoors. The music was so loud that it vibrated, so much so that it was almost impossible to sleep or to enjoy an evening indoors. The outdoor area was impossible to utilize because of the noise (N.T. 39-40).

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27. Mr. Ferrare has filed seven or eight criminal complaints with local authorities, which have resulted in citations and ultimate findings of “not guilty” (N.T. 42-43).

28. To Mr. Ferrare’s knowledge, the restaurant was built in approximately 1985 and entertainment began on the outside deck in approximately late 1994 or 1995. Mr. Ferrare first complained of noise from the deck, when the rock music began in approximately 1996 (N.T. 4749).

29. Joanne Ferrare also lives at 7 Pine Oak Lane in Horsham. She filed a written complaint in August of 1996 alleging that loud noise was coming from the licensed premises. The complaint includes loud music and noise from the crowd (N.T. 49-50).

30. Mrs. Ferrare indicated that Wednesday, Thursday, Friday and Saturday evenings from approximately 5:00 p.m. until 11:00-11:30 p.m. at night and even sometimes as late as 2:00 a.m. in the morning she hears loud music coming from the premises (N.T. 51-52).

31. Mrs. Ferrare kept a daily diary, beginning with August of 1996 (N.T. 52-54).

32. Mrs. Ferrare in every instance was not able to recall the dates and times, however, she was clear that four nights a week, she heard loud music and/or crowd noises coming from the licensed premises. Prior to August 16, 1996, she did not keep a formal diary, however, she did make various other notes which she retained (N.T. 52-54).

33. On August 8, 1996, Mrs. Ferrare heard noise in the nature of loud voices from the crowd and loud music emanating from the licensed premises (N.T. 56-59).

34. On August 11, 1996 starting at approximately 5:00 p.m. at the licensed premises, the music continued until 11:00 or 12:00 and the noise continued until approximately 2:00-2:30 a.m. (N.T. 59).

35. On August 16, 1996, Mrs. Ferrare also heard loud music and crowd noise from the licensed premises. As a result of this noise, she contacted the Horsham Police (N.T. 60).

36. Mrs. Ferrare has lived at her address for fifteen to sixteen years. There has not always been a restaurant at that location. Approximately six years after she moved into her home, an old barn was converted into a very fine restaurant. There was not a problem with the restaurant until three years ago when the deck was added. Originally, there were quiet dinners on the deck, which were not problematic. The following year, the establishment changed into more of a nightclub atmosphere. The premises became packed with standing room only. Mrs. Ferrare tried for a year to solve the problem between her and the Licensee (N.T. 63-64).

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37. Joanne Fox lives at 2 Temper Road in Horsham. She is approximately 500 feet from the licensed premises. Her deck faces the licensed premises on an angle. She is not across the pond, but rather located to one side of the premises (N.T. 75-76).

38. Mrs. Fox filed a complaint with the Bureau on August 16, 1996. She complained that loud music was emanating from the licensed premises from Wednesday to Sunday. She also complained of loud voices (N.T. 78).

39. Mrs. Fox indicated that she has been disturbed by noise from the establishment for two or three years prior (N.T. 78).

40. Mrs. Fox indicates that the noise begins at 6:00 p.m. and sometimes goes until 11:00 or 12:00 p.m. She hears the noise Wednesday through Sunday every week from May until October (N.T. 79 and 87).

41. She has contacted the licensed premises with regard to the noise, to no avail. She has also called the police, but the problem always recurs (N.T. 80).

42. David Collins lives at 4 Penn Oak in Horsham. He is approximately 175-200 feet from the licensed premises (N.T. 89).

43. He filed a complaint with the Bureau of Enforcement in August of 1996 in response to music and crowd noises coming from the licensed premises. Wednesday, Thursday, Friday, Saturday and Sunday afternoons, he hears music from bands and crowd noises. From his backyard, he can see people coming into the premises at night (N.T. 90-91).

44. He could also see individuals setting up speakers on the deck and other paraphernalia used for amplification. From this he concluded that there was a band playing on the premises (N.T. 91).

45. From his backyard, he saw an individual participating and singing along and could see someone acting as the master of ceremony (N.T. 92-93).

46. Mr. Collins has lived in the area since 1985, but he does not recall a problem with the restaurant until 1995 (N.T. 91-92).

47. Mr. Collins indicated that Mrs. Ferrare became the record keeping individual for the cul-de-sac; he did not keep any records of the specific dates (N.T. 93-94).

48. Mr. Collins indicated that on Friday nights the music played the longest, sometimes until 1:00 a.m. (N.T. 97).

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49. Dave Donaldson lives at 6 Pine Oak Lane in Horsham. He filed a complaint with the Bureau with regard to noise, music and loud voices coming from the licensed premises (N.T. 99-100).

50. Mr. Donaldson lives approximately 200 feet from the licensed premises. Mr. Donaldson complained that noise from the licensed premises started about a year from the time he gave a statement to the Bureau on August 16, 1996 (N.T. 101).

51. He described Wednesday through Sunday as the worst days of the week, in that on Sunday he hears the noise from early afternoon through the evenings and on Thursdays and Fridays until approximately 11:00 p.m. (N.T. 102).

52. Mr. Donaldson typically does not get home until 7:30 or 8:00 p.m. The noise is generally going on when he arrives home (N.T. 102-103).

53. Mr. Donaldson heard particularly loud voices on August 11, 1996, which was a Sunday. The noise continued until after 7:00 p.m. Mr. Donaldson specifically recalled music and loud noise coming from the licensed premises on August 8 and August 16, 1997 (N.T. 106107).

54. The music stopped at approximately 10:30 p.m. on August 8, 1996 and on August 16, 1997, the music stopped around 10:30 or 11:00 p.m. (N.T. 108).

55. Mr. Donaldson cannot use his outside deck. The noise is so bad that sometimes he can hear it with the windows closed, to the point where he has difficulty holding a normal conversation. Frequently, when the television is on, even when the windows are closed, he must turn up the volume, because the noise is excessive (N.T. 103-104).

56. Mr. Donaldson has filed complaints with the local police and with the Bureau (N.T. 104-105).

CONCLUSIONS OF LAW:

Count No. 1 - On August 8, 11, 16, 18, 21, 22, September 13, 1996, and on divers other occasions, Wednesday, Thursday, Friday and Saturday nights since May of 1996, Licensee, by its servants, agents or employes, used, or permitted to be used on the outside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

Count No. 2 – There is insufficient evidence to conclude that on August 8, 11, 16, 18, 21, 22, September 13, 1996, and on divers other occasions since May 1996, the licensed establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5503 of the Crimes Code, 18 Pa. C.S. Section 5503.

CITATION NO. 96-2655 COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Kathy Kidd is an officer of the Bureau of Enforcement and has been since June 3, 1995. On October 17, 1996 to November 1, 1996, she conducted an investigation of the licensed premises (N.T. 112-114).

2. Relative to Officer Kidd's investigation, she took a statement from Joanne Ferrare, the complainant (N.T. 115-117).

3. Joanne Ferrare resides at 7 Penn Oak Lane in Horsham and lives approximately 300 feet from the licensed premises. Joanne Ferrare retained a calendar and notes regarding activities at the licensed premises (N.T. 119).

4. On October 18, 1996 at approximately 8:45 p.m., she noted that it was a light rainy evening and that there was music playing at the licensed premises. She heard loud music at 8:45 p.m., loud crowd noises. The doors were open to the restaurant. She called the police at 9:30 p.m., in that the music had escalated at that point (N.T. 120).

5. On October 24, 1996, the music began at the licensed premises at 5:45 p.m. On a previous occasion, Mrs. Ferrare noted that plastic sheets were hung on the deck during the cold months and heat was pumped onto the deck so that the deck could continue to be used throughout the winter. On a warm evening, the plastic was rolled up. On October 24, 1996, there was no plastic covering, the doors were open and the complainant could hear yelling. At 9:40 p.m. she heard a guitar and singing. The doors remained open (N.T. 120-122).

6. On October 26, 1996 at approximately 7:00 p.m., the complainant heard loud country music coming from the licensed premises. She called the police at 9:30 p.m. (N.T. 122).

7. Mrs. Ferrare indicated that the deck extends out from the restaurant. There are doors from the restaurant out to the deck. There were crowds of people inside the restaurant and the doors to the deck were open. There were also people on the outside deck (N.T. 122-123).

8. There was no band playing on the deck, however, she heard music coming from the interior of the licensed premises (N.T. 123).

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9. Mrs. Ferrare recorded the names of songs that the crowd was singing along with the disc jockey (N.T. 123).

CONCLUSIONS OF LAW:

Count No. 1 - On October 18, 24 and 26, 1996, 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 outside, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

Count No. 2 – There is insufficient evidence to conclude that on October 24 and 26, 1996, the licensed establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5503 of the Crimes Code, 18 Pa. C.S. Section 5503.

CITATION NO. 97-0231 COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Joanne Ferrare resides at 7 Penn Oak Lane in Horsham and lives approximately 300 feet from the licensed premises. Joanne Ferrare retained a calendar and notes regarding activities at the licensed premises. In fact, Mrs. Ferrare became the record keeper for the community (N.T. 119 and 126).

2. On November 1, 1996, she noted that there was a Halloween party. She heard loud noises from 6:00 p.m. on the deck to 9:06 p.m. There was loud music, laughing, which could be heard inside her home. The doors were open from the restaurant to the deck. She could hear glass bottles being thrown at 9:06 p.m. and something in her living room. At 10:30 p.m., she called the police and at 11:30 p.m. the deck was finally closed (N.T. 124).

3. On November 8, 1996 at approximately 7:15 p.m., a Friday night, she heard loud noises in that it was a warm day, people were outside and the doors were open (N.T. 124-125).

4. At 7:30 p.m., it began to rain and everyone went inside the plastic. Still, the music was very loud and she could hear bass drums at 8:25 p.m. She called the police at 8:35 p.m., as did other neighbors. She noted that at 8:46 p.m. there was a drum with Caribbean type music, crowded yelling and thumping in her home from the licensed premises. She again called the police at 10:15 p.m. (N.T. 125).

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5. On November 14, 1996, Mrs. Ferrare heard throbbing music. Her notes indicate that Mr. Collins complained that night as well (N.T. 126).

6. On November 15, 1996, Mrs. Ferrare specifically remembered that she came home at 9:45 p.m. At 10:00 p.m., she called the restaurant because of the loud music. Licensee indicated that they were going to stop the music at 10:00 p.m. (N.T. 126-127).

7. On November 22, 1996 at 7:00 p.m., it was a cold evening. In response to loud noise and music, Mrs. Ferrare called the police at 10:45 p.m. (N.T. 127-128).

8. On November 29, 1996, a Friday evening, her notes indicated it was a cold evening. There was plastic down, but she could still hear loud music. Mrs. Ferrare could observe the plastic covering the deck from her home. Loud music was heard from 8:00 to 8:30 p.m. At 9:30 p.m., she called the police in response to drums and jazz music being heard in her bedroom (N.T. 128-129).

9. On December 5, 1996, the complainant heard loud music. At 10:00 p.m., she could hear songs being played very loudly to include a song called "Taking Care of Business." The complainant noted that it was a rainy, cold night and the music was very loud (N.T. 129).

10. On December 16, 1996, she recalled, without the aid of her notes that at 11:30 a.m. in the day when it was rather cold, she could hear Christmas carols being sung extremely loud at the licensed premises. It lasted for approximately one hour and a half (N.T. 129-130).

11. On December 5 and December 16, 1996, she heard music emanating not from the deck area of the premises, but from the interior (N.T. 130).

12. Jeffrey T. Clark is the Code Enforcement Officer for Horsham Township. His duties include enforcement of all township written codes and ordinances, as well as building inspections and zoning reviews (N.T. 137).

13. The licensed premise is located within Horsham Township. For zoning it is classified in a business campus district (N.T. 141).

14. The piece of ground where the licensed premises is located on a larger area known as the business campus. It is the only place in town that is zoned as such. According to Mr. Clark, this came about as the result of a Court stipulated agreement between the county and the township or the developer (N.T. 142).

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15. Article XX11-A of the Township Code sets forth the standards for the business campus district. Section 2200-A reads as follows: “The business campus district is hereby established as a district in which regulations are intended to permit and encourage small scale business, office, non-manufacturing development and uses compatible therewith in locations that are harmonious with adjacent areas of the township.” Section 510 Township Code also sets forth the decibel levels, which may not be exceeded on boundaries of a business district property (N.T. 142-144 and Exhibit L-4).

16. The licensed property borders residential property and business offices (N.T. 144145).

17. The deck of the property is 150 yards from the closest residential property (N.T. 146).

18. Mr. Christopher Dubil is the general manager of the licensed premises. In response to the complaints, the general manager moved the band to another area. He also built another area on the outside part to hide the band behind some part of the building. He also put up some sound barriers. Eventually, Licensee moved the band inside (N.T. 153-154).

19. When Licensee began getting complaints, Licensee bought a sound level meter. The sound level meter was taken to the property line and measurements were taken. Measurements were also taken closer to the establishment. At no time did the sound level exceed the regulations permitted by the township (N.T. 154-155).

20. The township prohibits noise levels to exceed 72 decibels. The sound level never, according to the meter, exceeded 68 decibels (N.T. 154-155).

21. Mr. Wetzel is the restaurant bar manager. He indicated that in response to a complaint, the restaurant put up siding on the outside of the roof and on the left-hand side of the deck. The outside bar shuts down at approximately 10:00 p.m. (N.T. 162).

22. Mr. Wetzel took decibel readings, which never exceeded 67 (N.T. 162).

23. As a part of Mr. Wetzel’s duties, he acts as bartender inside and outside, as needed (N.T. 169).

24. At some point during the beginning of the summer of 1997, all those speakers were taken out and the bands removed from the deck (N.T. 178-179).

25. Janet Malofiy is employed at the licensed premises. She indicated that there are two restaurants at this establishment, one for fine dining and one, which is casual. She became

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aware of the complaints sometime in 1996. She also took decibel readings to make sure that they did not exceed limits set by the township (N.T. 183-184).

26. The witness testified that the Licensee has put up Plexiglas walls to block any noise from escaping the deck area (N.T. 186-187 and Exhibits L-5 and L-6).

CONCLUSIONS OF LAW:

Count No. 1 - On November 1, 8, 14, 15, 22, 29, December 5 and 16, 1996, Licensee, by its servants, agents or employees, 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 outside, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

Count No. 2 – There is insufficient to conclude that on November 1 and 8, 1996, the licensed establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5503 of the Crimes Code, 18 Pa. C.S. Section 5503.

PRIOR RECORD:

Licensee has been licensed since July 8, 1986, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has had a record of prior violations as follows:

Citation No. 2167, 1996. \$200.00 fine.

1. Unlawfully possessed liquor obtained from a source other than a Pennsylvania State Store. February 15, 1996.

DISCUSSION:

An officer from the Bureau visited the licensed premises and verified that there were speakers and amplified equipment on the premises. At the time of the officer's visit, a band was playing on the deck. Complainants could also see, on some occasions, bands on the deck area. There is no doubt that the Regulations of the Liquor Code were violated on all nights where music was heard outside the four walls of the premises, despite the sound levels, which were reported from the meter readings.

The level of noise recorded by the sound meter is of no moment when a premise has been licensed to sell alcoholic beverages. Licensees are governed by the Liquor Code and its Regulations, in addition to any local requirements. Section 5.32(a) of the Liquor Control Board Regulations reads as follows:

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A licensee may not use or permit to be used inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard on the outside of the licensed premises.

Licensee is also cited by the Bureau for other sufficient cause shown, pursuant to Section 471 of the Liquor Code, 47 P.S. Section 4-471 and Section 5503 of the Crimes Code, 18 Pa. C.S. for disorderly operation of the premises.

We realize that the Licensee was charged criminally on numerous occasions for disorderly conduct, as related to the licensed premise and each time was found not guilty, but was admonished by the magistrate. However, sanctions against license holders have been upheld where underlying conduct does not produce any charges or where criminal charges based on the same conduct have not resulted in a conviction. *See V.J.R. Bar Corp. v. Pa. Liquor Control Board*, 390 A.2d 163 (Pa. 1978). “Sufficient cause” is not limited to violations of law. *Id* at 164. Section 471 is broad enough to include noisy and disorderly operation. *Appeal of Ciro’s Lounge, Inc.* 358 A.2d 141 (Pa. Cmwlth. 1976). Further, the Bureau must prove its case by a clear preponderance of the evidence, and not beyond a reasonable doubt. *V.J.R., supra* at 165; *see also In Re Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

Violations of the Liquor Code are strict liability offenses. However, where the Bureau alleges violation of the Crimes Code, it must be demonstrated that the Licensee knew or should have known of the unlawful activity and with that knowledge failed to take substantial steps to remedy the situation. *Pa. Liquor Control Board v. T.L.K.*, 544 A.2d 931 (Pa. 1988).

The facts as presented in the hearing give rise to a violation of operating a noisy and/or disorderly operation and constitute “sufficient cause” under the Liquor Code. The premise was operated in such a noisy manner, with disregard for the plight of the complaints over such an extended period of time, so as to give rise to a violation. Section 5503 of the Pennsylvania Crimes Code, 18Pa.C.S.A. Section 5503 (a) reads as follow:

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A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

- (1) engages in fighting or threatening, or in violent or tumultuous behavior;
- (2) **makes unreasonable noise**
- (3) uses obscene language, or makes an obscene gesture; or
- (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor. (emphasis added).

To sustain a violation for disorderly operation, the premises must routinely be operated in this fashion. See *Matter of Revocation of Liquor License No. R-17844*, 447 A.2d 723 (Pa. Cmwlth. 1982). See also *Com. v. Hughes*, 410 A.2d 1272 (Pa. Super. 1979) (Intent may be established by reckless disregard). Numerous complainants from the residential area adjacent to and across the lake from the licensed premises indicate that they have been disturbed, over an extended period, by noise emanating from the licensed premises.

The noise comes in various forms, which includes music and vocals from the band, singing from the crowd, conversation from the crowd, yelling and singing and the clamor of glass and breaking of bottles. The neighbors have been prevented from using their own decks and back yards due to the level of noise from the licensed premise. The Licensee is utilizing the deck in such a way that the residents are precluded from using theirs.

While the Licensee has indeed made attempts to limit the noise, i.e. the band was moved inside. The deck is covered during times of inclement weather. That appears to be largely for the convenience of Licensee and its patrons. Licensee's efforts have been largely ineffective.

On evenings when the deck is covered, the noise is not as pronounced, but still disturbing. Licensee's failure to stop this noise is more than a mere annoyance, but an intrusion into the peace and quiet of the neighborhood. Moreover, otherwise seemingly peaceful citizens have resorted to threats and intimidation of the Licensee, because they have been aggravated by the unyielding noise. They have been further frustrated by their inability to get satisfaction, after repeatedly informing the Licensee of this prevalent problem and after advising numerous legal authorities of their plight.

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The purchasers of this land, which at some point was owned by the Licensee, did not foresee this restaurant transforming into a disco, which would impede use of their properties. However elegant and/or richly appointed the restaurant might be, it is a disturbance to the neighborhood. Despite knowledge by the Licensee that this efforts have failed to adequately redress this problem. Night after night, the thumping beat and the loud voices continue. In some cases, the noise permeates neighbors walls and disturbs their enjoyment of their televisions, conversation and sleep. It would be unconscionable to allow this situation to persist.

The noise level is completely unreasonable, even intolerable and has continued for far too long. Effective measures must be taken, otherwise Licensee's amusement permit will likely be revoked.

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.

Therefore, penalties shall be assessed as follows:

Citation No. 96-2372

Count No. 1- \$1,000.00.

Citation No. 96-2655

Count No. 1 - \$1,000.00 and five days suspension.

Citation No. 97-0231

Count No. 1 - \$2,500.00 and ten days suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Homestead Restaurant, Inc., t/a Homestead Inn, License Number R-AP-SS-19531, pay a fine of Four Thousand Five Hundred Dollars (\$4,500.00) 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 and the bond forfeited.

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IT IS FURTHER ORDERED that the Restaurant Liquor License of Homestead Restaurant, Inc., t/a Homestead Inn, License Number R-AP-SS-19531 be suspended for a period of fifteen (15) days **BEGINNING** at 7:00 a.m. on Monday, October 12, 1998 and **ENDING** at 7:00 a.m. on Tuesday, October 27, 1998.

Licensee is directed on Monday, October 12, 1998 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and 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 a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The licensee is authorized on Tuesday, October 27, 1998 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal Checks, which includes business-use personal checks, are not acceptable.** Please make your guaranteed check 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

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t/a Homestead Inn
Citation Nos. 96-2372, 96-2655 & 97-0231

Harrisburg, PA 17110-9661

Dated this _____ day of _____, 1998.

Tania E. Wright, J. _____

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