



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

<p align="center">N.Y.S. LIQUOR AUT CDDF RESTAURANT INC ATTN: Alan Agresti 346 West 46th Street Ground Level NEW YORK, NY 10036</p>	<p>Summons No: 000285164X et al. (1 Summons)</p> <p align="center">DEPT OF ENVIRONMENTAL PROTECTION,</p> <p align="center">-against-</p> <p align="center">N.Y.S. LIQUOR AUT CDDF RESTAURANT INC</p> <p>Hearing Date: 04/04/2022</p> <p>Hearing Location: Remote</p> <p>Type of Hearing: By Telephone</p>
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Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000285164X	Dismissed	11/21/2021	346 W 46th Street Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BN37	A.C. 24-231(A)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Petitioner did not appear. Alan Feierstein and Amedeo Agresti appeared for Respondent.

Respondent is charged with a violation of Administrative Code 24-231(A) made/caused/permitted music originating from a commercial establishment above allowable (42 dba) into complainants apartment. Total reading from complainants living room are 58 dba with 47 dba ambient and source of 58 dba in violation of 231(a) of the NYC noise control code- observed and heard music from establishment in complainants living room. Equipment/Apparatus in violation 1 DJ spin table, 1 microphone, 3 speakers and 1 laptop.


Mr. Agresti stated that the cited premises is used for private events and at the time the summons was issued the cited premises was used for a dance performance. Mr. Agresti also stated that the performers use the microphone to explain the dances they were doing. Mr. Agrestic further stated that the microphone sound came through the speakers and the performers were talking to the guest Mr. Agresti stated that the performers were not singing on the microphone, but they were using the microphone to invite guest onto the stage. Mr. Agresti also stated that the issuing officer told him that the Respondent was only 3 decibels over the allowable limit, and Mr. Agresti ensured the issuing officer that he would reduce the sound. Mr. Agresti further stated that when the issuing officer inspected the equipment he said that the microphone was on the highest level. Mr. Agresti further stated that since the summons was issued the Respondent removed the speakers, purchased smaller speakers, an audio engineer came in to set limits on the system to be code compliant, and a lock was placed on the system to keep sound levels in compliance with the code. Mr. Agresti also states that the issuing officer told him that the voice emanating from the microphone was what was over the decibel limit.

Mr. Feierstein stated that the allegations do not make out a violation of the cited code because the cited code is specifically for music and not loud voice sounds.

Administrative Code § 24-231 states that "Commercial music. (a) No person shall make or cause or permit to be made or caused any music originating from or in connection with the operation of any commercial establishment or enterprise when the level of sound attributable to such music, as measured inside any receiving property dwelling unit: (1) is in excess of 42 dB(A) as measured with a sound level meter; or (2) is in excess of 45 dB in any one-third octave band having a center frequency between 63 hertz and 500 hertz (ANSI bands numbers 18 through 27, Inclusive), in accordance with American National Standards Institute standard S1.6-1984; or (3) causes a 6 dB(C) or more increase in the total sound level above the ambient sound level as measured in decibels in the "C" weighting network provided that the ambient sound level is in excess of 62 dB(C)."

I acknowledge the allegations in the summons; however I find that Mr. Agresti refuted them by credible testimony.

The summons is dismissed.

	04/05/2022
04/05/2022	04/05/2022
Myeisha Rouff, Hearing Officer	Date