

KEEP THE NOISE DOWN!

In a recent decision, the First Department Appellate Court found that the Empire Hotel, an upscale outdoor bar and lounge owned by famed restaurateur Jeffrey Chodorow, violated a city noise level ordinance, after the members of a neighborhood residential building complained about excessive noise emanating from the Hotel's roof-deck bar. Those familiar with the case say that the establishment will probably have to close the roof deck earlier than it currently does, which is sometimes as late as 4 a.m.

This recent decision marks a rare occasion where a residential building prevails in court against a bar, club, or lounge based on noise code violations, and may encourage others to take such establishments to court to settle noise code violations. In the past, most of these disputes were kept out of the courts and handled by community boards and the New York State Liquor Authority.

This is not the first publicized noise violation case in New York. Last year, the celebrity hotspot Beatrice Inn was shut down following noise complaints, and currently, there is controversy over the proposed opening of a new wine bar on Central Park West, as residential neighbors anticipate late-night noise and crowds.

It is important that restaurant, bar, lounge and club owners are fully aware of all the city's noise ordinances and employ measures to ensure their compliance. Failure to do so may result in fines or litigation seeking injunctions, damages, or other relief.

As one of the industry's foremost legal experts, we have represented all types of restaurants, bars and clubs in connection with precisely this type of matter. Our firm has written on the topic of noise violations and knows how to navigate around such legal hurdles since we have litigated several of these cases in the past.

Our firm recently defended a premiere nightclub against a residential neighbor who sought an injunction precluding the club from playing music above a certain volume and seeking damages resulting from the alleged tort of nuisance. We successfully defended the client in a multi-day trial, and when the club subsequently re-invented itself, we worked closely with acoustic engineers and sound experts to conduct testing to ensure the club would always comply with the revamped NYC Noise Code. In light of the Appellate Court's recent decision, it is important to remember that sometimes, parties facing identical issues can get dramatically different results simply because of the counsel they select.

We are closely involved in monitoring these events and will continue to provide you with pertinent updates as more information becomes available. If you have any questions about the matters covered in this Client Alert, or wish to schedule a private consultation, please call Terrence A. Oved, Esq. of Oved & Oved LLP by telephone at 212.226.2376 or contact by email at terry@ovedlaw.com.

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