

Mailing Date: MAR 24 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1659
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-382144
v.	:	
	:	LID - 46513
ROBERT J. VIA, INC.	:	
T/A HUNTER'S INN	:	
36 S. QUEEN ST.	:	
LITTLESTOWN, PA 17340-1602	:	
	:	
	:	
ADAMS COUNTY	:	
LICENSE NO. R-AP-SS-12680	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
LICENSEE: NO APPEARANCE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on July 16, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against ROBERT J. VIA, INC., License Number R-AP-SS-12680 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)] in that on October 10 and November 7, 2008, Licensee, by its servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

The second count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on January 17, February 7 and March 1, 2009, 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 third count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on March 14, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

On August 3, 2009, counsel for the Bureau filed a Motion to Withdraw Count 1 of the Citation. The Motion was granted.

The investigation which gave rise to the citation began on October 1, 2008 and was completed on June 3, 2009; and notice of the violation was sent to Licensee by Certified Mail on July 2, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 17, 2009 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 36 S. Queen Street, Littlestown, PA 17340-1602 by certified mail, return receipt requested and by first class mail on November 2, 2009. The notice set forth the date and time of the hearing as December 17, 2009 at 2:00 p.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNT 2

1. On January 17, 2009, two officers of the Bureau arrived in the area of the licensed premises. As they exited, they could hear music emanating from the licensed premises (N.T. 8). The officers conducted a sound check and could hear music emanating from the licensed premises at distances up to 60 feet (N.T. 8-9).

2. The officers entered the licensed premises and observed a DJ playing music that was amplified through loudspeakers. The music amplified through loudspeakers was the source of the music that was heard outside (N.T. 9-10).

3. On February 7, 2009, one of the officers again arrived in the area of the licensed premises. As he exited his car he could hear music emanating from the licensed premises (N.T. 10). The officer conducted a sound check and could hear music emanating from the licensed premises at distances up to 66 feet (N.T. 10).

4. The officer entered the licensed premises where he observed a band called Bone Dry that was playing music that was amplified through loudspeakers (N.T. 10-11).

5. On March 1, 2009 the officer again revisited the licensed premises. Again, upon exiting his vehicle he could hear music emanating from the licensed premises (N.T. 11).

6. The officer conducted a sound check and could hear music emanating from the licensed premises at distances up to 86 feet (N.T. 11).

7. The officer entered the licensed premises and determined that the source of the music was a jukebox mounted on the wall which amplified music through loudspeakers (N.T. 11).

8. The officer exited the licensed premises at 1:00 a.m. and could again hear music emanating from the licensed premises at distances up to 78 feet (N.T. 11).

### COUNT 3

9. On March 14, 2009 the officer again arrived at the licensed premises at 12:45 a.m. Upon entering, the officer observed a female bartender heard to be called Candice (N.T. 12).

10. Shortly after entering, the officer's attention was drawn to three patrons who were directly to his left. One of these patrons, heard to be called Billy was talking in an extremely loud voice and using slurred speech. The officer took a seat near these individuals (N.T. 12-13).

11. The two patrons with Billy, a male and a female told the bartender not to serve Billy because they thought he was drunk. The bartender, Candice, went over and got a bottle of Yuengling Lager beer, brought it over to Billy and gave the beer to Billy. She said, "He'll be okay." (N.T. 13).

12. Billy drank some of the beer and immediately ordered two shots of alcohol for himself and the gentlemen companion with him. Candice went over to the bottle rack and poured two drinks and then put them in front of Billy. Billy gave one to his friend and drank the other one. The bottle came off what is known as the "speed rack." (N.T. 14).

13. The male patron who was with Billy (heard to be called Timmy) got up and went to the restroom. Timmy staggered as he walked to the restroom (N.T. 14).

14. Billy, while he was at the bar by himself was fighting to stay awake. He sat there, and a few times his head bobbed. At one point he fell asleep. The bartender, Candice, walked by and gave him a poke and woke him up. She then went on with her duties behind the bar (N.T. 14-15). When Timmy came back from the bathroom, Billy got up from his seat and went to go to the bathroom. When he stood up, he helped himself up off the bar. When he stood up he staggered to the left and almost fell. He caught himself by doing a double step and then staggered to the restroom. Although the restroom wasn't very far, he had a hard time keeping his balance (N.T. 15).

15. Billy staggered back from the restroom, and when he got back to the bar, Candice spoke to him. She told him that he was not going to be served again (N.T. 15).

16. Billy begged her. He wanted another drink. He said, "Come on, you know, get me another drink." His speech was extremely slurred. Candice laughed (N.T. 16).

17. At 1:40 a.m. the telephone rang and Candice answered it. She talked for a while and then said, "Billy it's for you." Billy got up from his seat and staggered down and went around to the side where there's a lift on the bar in order to get behind. He couldn't manage the lift, so he got down and tried to walk underneath. He had trouble and ended up crawling under. He got on the phone. He stood there for a while talking to someone. He then hung up. He turned around and wanted to "limbo" or do something backwards underneath the counter. He tried to do it but he couldn't and yelled help to Candice. Candice came over and held his head and his back while he got underneath and crawled and got back to his barstool (N.T. 16-17).

18. Candice announced last call. Billy kept begging her for beer. Someone had ordered takeout, and as she walked by where the draft beer is poured she picked up a plastic cup into which she poured Yuengling Lager beer. She then went over to serve someone who had ordered takeout beer. She took the plastic cup with the beer in it and placed it in front of Billy and then she went on with her duties. She did not ask Billy for money. Billy consumed the beer (N.T. 17-18).

CONCLUSIONS OF LAW:

Counts 2 and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since August 8, 2000, and has had two prior violations:

Citation No. 01-0603. Fine \$1,000.00.

1. Sales to a minor.
2. Minor frequenting.

Citation No. 03-0021X. Fine \$100.00.

1. Issued worthless checks in payment for malt or brewed beverages. October 2, November 20, 21 and 25, 2002.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count No. 2 of this case.

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 3 of this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 2 - \$250.00 fine
- Count 3 - \$1,250.00 fine and RAMP training

#### ORDER

THEREFORE, it is hereby ordered that Licensee ROBERT J. VIA, INC., pay a fine of \$1,500.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: [www.lcb.state.pa.us](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto:LBEducation@state.pa.us)) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the liquor Code [47 P.S. §4-471(d)].

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 4<sup>TH</sup> day of March, 2010.



Daniel T. Flaherty, Jr., J.

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**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.**

**Detach here and submit stub with payment**

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661

Citation No. 09-1659  
Robert J. Via, Inc.