

Mailing Date: JAN 07 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2789
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-398083
	:	
VESHQ INC.	:	
T/A STOTTSVILLE INN	:	LID - 57951
3512 STRASBURG RD.	:	
SADSBURY TWP.	:	
COATESVILLE PA 19320	:	
	:	
CHESTER COUNTY	:	
LICENSE NO. H-AP-SS-1608	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**ERIK S. SHMUKLER, ESQ.**

FOR THE LICENSEE:

**JOHN J. McCREESH, III, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 8, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Veshq, Inc., t/a Stottsville Inn, License Number H-AP-SS-1608 (hereinafter "Licensee").

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An Administrative hearing was held on Thursday, July 1, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The 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 §5.32(a), in that on May 16, June 19, 28 and August 22, 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 second count charges Licensee with violation of Section 404 of the Liquor Code, 47 P.S. §4-404, in that on May 16, June 19, 28 and August 22, 2009, Licensee, by its servants, agents or employes, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the subject license.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises beginning July 24, 2009, relevant to a complaint. The officer's investigation of the premises included making several visits. He made his first visit to the premises on August 2, 2009 at approximately 9:00 p.m. The officer spoke with the complainant on September 23, 2009 and retrieved a copy of the noise log, which the complainant had prepared (N.T. 8-9).

2. On October 14, 2009, the officer spoke to a Mr. Saleh relative to the complaint. He indicated that there was an acoustic guitar player who appeared at the premises and brought his own speaker system. There was no speaker system at the premises (N.T. 9).

3. Mr. Saleh indicated that the acoustic guitar was being played for dinner guests. During the officer's visit, there was no one utilizing the exterior of the premises (N.T. 10).

4. The Bureau of Enforcement and Licensee presented an additional license agreement dated April 11, 2005, which shows Licensee's application to extend its premises to include an outside area. There was a protest raised regarding Licensee extending the premises. The request for extension was granted, however, it was subject to a conditional licensing agreement, indicating that Licensee would have no live outside music on the portion of the outside premises, which was subject to the application and that they would landscape and build a fence at least seven feet high between the premises and the adjoining property (N.T. 11-12 and Exhibit B-3).

5. Elmer Pluck lives in the vicinity of the licensed premises and has lived at the same location for approximately forty years. He contacted the Bureau because of what he described as loud music coming from the licensed premises. He indicated that he lives around the corner approximately thirty-five feet away and that the licensed premises is directly across from his house (N.T. 13-15).

6. Mr. Pluck prepared a noise log which indicated that on May 16, 2009, he heard loud music coming from the outdoor patio of the licensed premises and that noise could be heard in his house with the windows and doors shut. The music continued until 11:15 p.m. (N.T. 15).

7. The complainant indicated that on June 19, 2009, he could hear the sound of music and a person talking over a microphone. On June 28, 2009, he again heard music being played and he believed that it was coming from the outdoor patio of the licensed premises. On August 22, 2009, the complainant heard loud amplified music which he thought was coming from the outdoor patio of the licensed premises, which began around 7:30 p.m. He also heard a female voice singing music. He called 911 at 9:57 p.m. to complain about the music and noise from people trying to sing along with the music. A female dispatcher told him that she would have an officer stop by the premises. He called 911 again at 10:39 p.m., because the loud yelling and music was still going on. He spoke to a male dispatcher at the time and said that he heard what appeared to be a guitar player and some sort of recorded music in the background (N.T. 16-17 and Exhibit B-4).

8. Mr. Pluck testified that he complained because of the loud music and the loud voices of people cursing. He indicated that they could be heard inside his house with the windows and doors open (N.T. 18-19).

9. Mr. Pluck did not go to Stottsville Inn, but believed that the noise was coming from the patio area (N.T. 20).

10. Hanson Saleh is the owner of the licensed premises. He purchased the property in 2007. Prior to that, he started there as a chef. He stated that the restaurant is an upscale dining area. He indicated that an artist named Bob Crotchie plays the guitar at the premises. He brings his own equipment and plays for the dinner crowd (N.T. 44-46).

11. The dining room holds roughly thirty to forty people (N.T. 46).

12. Mr. Saleh indicated that throughout the years he has been there, no one plays music outside (N.T. 48-49).

13. June 19, 2009 was a Friday night, and Mr. Saleh stated that there was no music playing on that day (N.T. 49).

14. June 28, 2009 was a Sunday, and Mr. Saleh stated that no music is ever played on Sundays (N.T. 49).

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15. On August 22, 2009, Mr. Saleh's calendar indicates that "Neon Alie" performed inside the licensed premises, but not outside on the patio. He stated that they only use two guitars and a singer (N.T. 49-50).

16. Mr. Saleh indicates that on occasion they do have a disc jockey. He indicated that on May 16, 2009, there was no disc jockey, but that Neon Alie did perform on that day. On June 19, 2009, he indicated that there was no music at all, not even a disc jockey (N.T. 50).

#### CONCLUSIONS OF LAW:

Count No. 1 - On May 16, June 19, and August 22, 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a).

Count No. 2 - There is insufficient evidence to conclude that on May 16, June 19, 28 and August 22, 2009, Licensee, by its servants, agents or employes, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the subject license, in violation of Section 404 of the Liquor Code, 47 P.S. §4-404.

#### PRIOR RECORD:

Licensee has been licensed since May 3, 2007, and has no record of prior violations.

#### DISCUSSION:

When the officer visited the premises, on no occasion did he find a violation. However, the complainant did record a log indicating he could hear the sound of music and people, which he believed to be coming from the premises on May 16, June 19, June 28 and August 22, 2009. The Licensee indicates that on Sunday night there is no disc jockey and no music and that that was the case on June 28, 2009.

There is sufficient evidence to show that on May 16, June 19 and August 22, 2009, the Licensee had music and speakers on the premises that could be heard outside the premises so as to have disturbed Mr. Pluck's quiet enjoyment of his residence. If music can be heard at some distance outside the premises, there is a presumption that it was in fact being amplified. In addition, the owner of the premises admits that on occasion, the groups that play do use amplified music. What cannot be presumed is the location of the entertainment. While it is a clear violation of the Regulations if music can be heard outside the licensed premises, there is only a violation of the Conditional Licensing Agreement, if by its own terms, live amplified music is played on the portion of the premises, which was subject to the application, i.e. the request for an extension of the premises.

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In that there is no proof that music was coming from that area, there is no finding of violation of the Conditional Licensing Agreement. However, Licensee still must take substantial steps to prevent music from being heard outside the premises. It is not acceptable to place speakers in the area inside that will provide entertainment to the patio area, if that music can then be heard in the surrounding neighborhood. Licensee is under all circumstances obliged to contain the music within the four walls of the premises.

If the owners allow music to be played on the outside portions of the premises, they should be aware that it is a violation and if investigated and found to be true, it will jeopardize the license.

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:

Count No. 1 - \$350.00.  
Count No. 2 - DISMISSED.

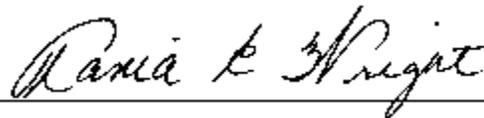
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Veshq, Inc., t/a Stottsville Inn, License Number H-AP-SS-1608, pay a fine of Three Hundred Fifty Dollars (\$350.00) 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.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 13<sup>TH</sup> day of December, 2010.



Tania E. Wright, J.

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**NOTE:** MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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Detach Here and Return 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.** 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  
Harrisburg, PA 17110-9661

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