

Mailing Date: MAY 03 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1310
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-407553
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-S-12680	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: ROBERT J. VIA, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 2, 2010, 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 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on May 9, 2010, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on May 9, 2010, Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The third 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 February 13 and April 10, 2010, 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 investigation which gave rise to the citation began on February 4, 2010 and was completed on May 20, 2010; and notice of the violation was sent to Licensee by Certified Mail on June 17, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 8, 2011 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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:

COUNTS 1 AND 2

1. On May 9, 2010 at 2:57 a.m., two officers of the Bureau pulled into the parking lot of the licensed premises (N.T. 10).
2. As the officers sat in their car talking, one of them saw three patrons depart from the licensed premises. One of the officers walked up to the licensed premises and could hear multiple voices inside. He pulled on the rear door entering into the licensed premises, and it opened. He signaled the other officer that they would be entering inside (N.T. 10).
3. The officers entered the licensed premises and walked directly to the bar. They saw two patrons seated at the bar drinking bottles of Miller Lite beer. He saw another bottle of Yuengling Lager beer open on the counter in front of a person named Few, who is the stepson of the principal of Licensee corporation, Robert Via (N.T. 10-11).
4. The officers identified themselves vocally and with badge to everyone present. They observed five people seated at the bar counter and four other people were engaged in employment related activities (N.T. 11).
5. The individuals seated at the bar were doing nothing other than socializing (N.T. 11).

COUNT 3

6. On February 13, 2010 at 12:20 a.m., an officer of the Bureau arrived in the area of the licensed premises. Upon arrival, he could hear music emanating from the licensed premises. He conducted a sound check, and could hear music emanating from the licensed premises at distances up to 46 feet (N.T. 6-7).

7. The officer entered the licensed premises on February 13, 2010 where he observed a barmaid rendering service to patrons. He observed that the source of the music was a jukebox the music from which was amplified through a loudspeaker (N.T. 7-8).

8. The officer departed the licensed premises at 1:20 a.m. on February 13, 2010 and could hear music emanating from the licensed premises at distances up to 58 feet (N.T. 8).

9. On April 9, 2010 an officer of the Bureau arrived at the licensed premises at 11:25 p.m. He entered the licensed premises through the front area and observed a band performing music for the entertainment of patrons (N.T. 8).

10. The music from the band was amplified through loudspeakers (N.T. 8-9).

11. The officer departed the licensed premises at 1:25 a.m., now April 10, 2010 and could hear music emanating from the licensed premises at distances up to 238 feet (N.T. 9).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

DISCUSSION:

COUNTS 1 AND 2

Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] provides that all patrons of a Licensee shall be required to leave that part of the licensed premises habitually used for the serving of liquor or malt or brewed beverages to guests or patrons not later than one-half hour after the time the licensee is required by this act to cease serving liquor or malt or brewed beverages (2:30 a.m.), and shall not be permitted to have any previously served liquor or malt or brewed beverages in their possession. A patron is defined in Section 102 of the Liquor Code [47 P.S. §1-102] as any individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee or any person on the licensed premises except those actually engaged in an employment related activity. In this case, the officers observed five patrons sitting at the bar and not engaged in employment related activities after 2:30 a.m. on the day in question. Further, three of these individuals were found to be in possession of alcoholic beverages. I therefore conclude that Counts 1 and 2 of the citation have been sustained.

COUNT 3

Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] provides that a Licensee may not allow the sound of music or other entertainment or advertisement thereof which is amplified through loudspeakers to be heard outside the licensed premises. On the two dates in question, an officer of the Bureau heard music from a jukebox amplified through a loudspeaker and music from band instruments amplified through loudspeakers outside the licensed premises. I therefore conclude that the charge in Count 3 of the citation has been sustained.

PRIOR RECORD:

Licensee has been licensed since August 8, 2000, and has had three 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.

Citation No. 09-1659. Fine \$1,500.00 and RAMP training mandated.

1. Used loudspeakers or devices whereby music could be heard outside. January 17, February 7 and March 1, 2009.
2. Sales to a visibly intoxicated person. March 14, 2009.

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 this case.

Counts 1 and 2 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

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

Counts 1 and 2 merged - \$300.00 fine
Count 3 - \$350.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee ROBERT J. VIA, INC., pay a fine of \$650.00 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.

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

Dated this 12TH day of April, 2011.



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

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. 10-1310
Robert J. Via, Inc.