

Mailing Date: SEP 20 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 11-1369
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-431735
	:	
v.	:	
	:	
	:	PLCB LID - 63210
2350 N. GEORGE, INC.	:	
2350 N. GEORGE ST.	:	PLCB LICENSE NO. R-AP-SS-17998
YORK, PA 17406-3202	:	

ADJUDICATION

**BEFORE JUDGE THAU
BUREAU COUNSEL PIETRZAK
LICENSEE: JAMES M. PETRASCU, ESQUIRE**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 4, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 2350 N. GEORGE, INC., License Number R-AP-SS-17998 (hereinafter "Licensee").

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 June 5, 9 and 19, 2011, 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 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on June 19, 2011, Licensee, by its servants, agents or employes, 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 investigation which gave rise to the citation began on June 5, 2011 and was completed on June 23, 2011; and notice of the violation was sent to Licensee by Certified Mail on July 20, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 19, 2012 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:

Count No. 1

1. On the three dates charged, a Bureau Enforcement Officer heard amplified music escaping the premises as far away as 110 feet (N.T. 9-19).

Count No. 2

2. On June 19, 2011, two Bureau Enforcement Officers conducted an outside surveillance of the licensed premises beginning at 2:20 a.m. They were seated in a vehicle approximately 50 feet from the licensed premises. One Officer used binoculars (N.T. 30-40).

3. The area in front of the licensed premises is well lit. The Officers' position provided an unobstructed view (N.T. 57-59).

4. The Officer observed two men depart the premises at 2:45 a.m. The two escorted a woman to a car. One of the two re-entered the premises. The second stood in front of the premises drinking a beer, which he had in hand when he left the premises. (N.T. 58-60).

CONCLUSIONS OF LAW:

Counts No. 1 and 2 of the citation are **sustained**.

DISCUSSION:

Since an employe left the premises with an alcoholic beverage at 2:45 a.m., it necessarily follows he possessed it within the premises after 2:30 a.m. As I have repeatedly concluded, an employe who possesses an alcoholic beverage after 2:30 a.m. is a patron as defined by the Liquor Code.

PRIOR RECORD:

Licensee has been licensed since April 1, 2010, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

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

Count 1 - \$ 200.00 fine
Count 2 - \$1,000.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee 2350 N. GEORGE, INC., pay a fine of \$1,200.00 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.

Dated this 14TH day of September, 2012.



Felix Thau, ALJ

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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.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

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

IN RE: CITATION NO. 11-1369
2350 N. GEORGE, INC.