

Mailing Date: APR 26 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation Nos. 11-1226
LIQUOR CONTROL ENFORCEMENT	:	& 12-0311
	:	(Consolidated for Hearing
	:	Purposes Only)
	:	
v.	:	BLCE Incident Nos. W09-417454
	:	& W09-432483
CROSSING VINEYARDS	:	
AND WINERY INC.	:	PLCB LID - 49005
1849 WRIGHTSTOWN RD.	:	
PO BOX 866	:	
UPPER MAKEFIELD TWP.	:	PLCB License No. LK-164
WASHINGTON CROSSING PA 18977	:	
	:	
BUCKS COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, ESQ.

FOR THE LICENSEE:

SCOTT A. PETRI, ESQ.
JOHN A. TORRENTE, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of citations that were issued on July 15, 2011 and February 29, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Crossing Vineyards and Winery, Inc., License Number LK-164 (hereinafter "Licensee").

Crossing Vineyards and Winery, Inc.
In Re: Citation Nos. 11-1226 & 12-0311

An Administrative hearing was held on Thursday, May 10, 2012, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation. Many witnesses offered testimony pursuant to both citation matters and in the Licensee's case the testimony was often intended to be mitigating or exculpatory. Therefore, in the interest of judicial economy, in each matter, the testimony of witnesses in Citation No. 11-1226 and Citation No. 12-0311 is incorporated by reference where it may pertain to both matters.

The citations are as follows:

Citation No. 11-1226

This 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 July 16, 23, 24, August 6, 7, 13, 14, 20, 28, September 5, 10, 16, 25, October 2, 10, 15, 16, 24, 2010 and May 28, 2011, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside/outside 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 471 of the Liquor Code, 47 P.S. §4-471, in that on July 16, 18, 23, 24, August 6, 7, 13, 14, 20, 28, September 5, 10, 11, 16, 25, October 2, 10, 15, 16, 23, 24, 2010 and May 28, 2011, the licensed establishment was operated in a noisy and/or disorderly manner.

The Bureau of Enforcement filed Motions to Amend Citation No. 11-1226 and withdrew the dates of September 10, 2010 and May 28, 2011 regarding Count Nos. 1 and 2. The Motions were signed as GRANTED on January 24, 2012 and February 16, 2012, respectively.

Citation No. 12-0311

This 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 17, 18, 24, July 8, 15, 29, August 12, 19, 21, 26, September 9 and 10, 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 471 of the Liquor Code, 47 P.S. §4-471, in that on June 17, 18, 24, July 8, 15, 29, August 12, 19, 21, 26, September 9 and 10, 2011, the licensed establishment was operated in a noisy and/or disorderly manner.

CITATION NO. 11-1226
COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on June 22, 2011 and ended January 18, 2012. The notice of violation letter dated February 9, 2012 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on February 15, 2012. A citation dated July 15, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on July 19, 2011 (N.T. 25-26 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement was assigned to conduct an undercover visit to the licensed premises relative to complaints from neighborhood residents of noisy and disorderly conduct. On October 15, 2010, the Bureau officer arrived in the area of the licensed premises. The officer did an exterior check of the area surrounding the winery and the parking lot on Longmeadow Drive, listening for any noise that might be emanating from the premises. He did not hear any noise at that time. The officer then drove past the vineyard, a building and outdoor tent, a home and a parking lot in the surrounding area. The officer then returned to the licensed premises (N.T. 27-31).

3. The officer went into the parking lot and proceeded to an outdoor set of stairs into the building and into a retail area, where wine is sold. The officer heard music being played inside of the building. The officer proceeded through and observed a band performing in an area where there were tables. There were approximately twenty patrons seated and watching the band perform. The officer observed a jazz band consisting of a saxophone, acoustical guitar, a percussion instrument and a keyboard (N.T. 30-32).

4. The officer did not observe a microphone, but did observe two loudspeakers on the floor. The music he heard being played was louder than he would associate with unamplified music (N.T. 32-33).

5. The officer remained on the premises for approximately ten minutes. He then proceeded to the parking lot where his vehicle was parked and stood there to see if he could hear any music. He was not able to hear music at that point (N.T. 34-35).

6. The officer proceeded to Longmeadow Drive into the residential area where homes were located. He stopped and shut off the vehicle to attempt to listen to any noise which might be emanating from the licensed premises. He heard no noise at that point (N.T. 35).

7. The officer then made contact with two complainants who resided on Longmeadow Drive. He identified himself to M.M. and M.K. He did not hear any music inside of their residence at that time. At approximately 9:55 p.m., he went to the back deck, which was an extension of the home, where he heard jazz music similar to the music he had heard while at the winery (N.T. 35).

8. The Bureau officer indicated that he could only hear the music periodically in that the wind at times would drown it out. Because of the topography, the officer could not pace off the distance, but from previous experience, estimated that the deck was approximately 200 to 250 feet from the licensed premises (N.T. 36-37).

9. The officer indicated that he did not consider the music at an extremely loud volume, but could hear the music on the outside deck (N.T. 37).

10. The officer indicated that while he could not identify any one particular instrument, he could hear music, which he believed to be emanating from the winery, at the time that he was on the deck of the complainant's home (N.T. 41-42).

11. On May 20, 2010, the officer contacted Mr. T.C. via telephone and informed him that the Bureau was setting up a meeting at the licensed premises. The officer met with the licensee, T.C. on June 3, 2010, along with a trainee and other Enforcement officers (N.T. 38-39).

12. D.L. resides on Longmeadow Drive and has resided there for twelve years. D.L.'s backyard is attached to the vineyard, but is approximately two football fields from a tent, which is located on the surrounding property of the licensed winery (N.T. 54-55).

13. On August 20, 2011, D.L. was at home when a concert began. The concert was on the grounds of the vineyard under a tent. At that time, she could see the tent from her property and indicated that she could hear music from that area. On that date, she went outside about 7:30 p.m. and could hear music, the bass, an announcer and words to a song. She believed it to be amplified music in that she could hear from such a distance (N.T. 55-60).

14. D.L. recalls hearing a Beetle's song and songs from Creedence Clearwater Revival. She also heard other songs, but was not certain of the titles, she believes they were "I Think We're Alone Now" and "Rockin' Me Baby." She also heard the song "Can't Hurry Love." She noted that it was a sixties and seventies concert (N.T. 60-61).

15. D.L. also indicated that she had gone to the vineyard website, which indicated that concerts were being held on certain days. On August 28, 2010, there was an event going on which she presumed to be a wedding. She could hear Frank Sinatra singing a song. She was outside watering her flowers on her patio and could hear the bass, a woman yelling, noises and voices and music. She had her windows open, but ended up closing them (N.T. 61-63).

16. D.L. indicated that the events usually end around 10:00 p.m., but at 10:15 p.m., she could still hear people in the back where they park their cars (N.T. 63).

17. On September 25, 2010, D.L. came out to water her plants and at that time, she heard an event coming from the tent. She has two water fountains on her property and could hear the noise over the fountains. She indicated that these events generally start out low, but get progressively louder over the night. People eventually start singing in groups and cheering. Around 8:00 p.m., D.L. can usually hear bass music inside the house, which includes bumping (N.T. 63-64).

18. On October 22, 2010, the windows were open and D.L. could feel the thumping of bass music. She heard people cheering. D.L. indicated that the fountains were on and she could hear laughing and screaming over the noise of the fountains. At approximately 8:30 p.m., the music started getting louder. She could hear music in a family room with the windows open. She heard laughing and yelling which penetrated the walls of the house. She closed the windows at approximately 9:15 p.m. (N.T. 64-65).

19. On October 24, 2010, D.L. had one fountain on and could hear noise over that fountain, what she described as the normal yelling and cheering of the crowd. In that she heard so clearly, she believed that the words were coming over a microphone. That day she was outside, but went in and again closed the windows (N.T. 65-66).

20. On October 16, 2010, D.L. again heard noise from the licensed premises. As the night progressed, the noise increased. She was able to hear music that night, which she identified as music by the Righteous Brothers. Later people were celebrating and singing and she could hear loud music. She heard people singing and bottles clanging at approximately 10:00 p.m. The complainant indicated that she called the township and the police with regard to the noise from the licensed premises (N.T. 66-69).

21. The vineyard is approximately nineteen acres total and the complainant estimated that the tent may be over 800 feet from her premises (N.T. 72).

22. M.M. resides on Longmeadow Drive in Newtown, PA. Her property borders the vineyard. They share a long property line, approximately 170 yards. M.M. indicated that from their house to the licensed area of the vineyard property is approximately 67 yards. They have lived at that property for approximately ten years.

23. On July 16, 2010, M.M. was able to hear noise coming from the vineyard starting at approximately 5:30 p.m. M.M. heard noise through speakers and microphones, associated with instrumental music warming up and performing sound checks. Shortly after 7:00 p.m., a concert began, which was advertised on the vineyard's website as a part of the summer *wine and music series*. The music was advertised as fifties and sixties old fashioned American Rock and Roll. M.M. could hear a live band playing the song "Wake Up Little Suzy" and a lot of Elvis Presley music. In addition the music, public announcements were heard. The music stopped at approximately 9:20 p.m. (N.T. 77-80).

24. On July 18, 2010, M.M. heard a saxophone and keyboard playing, which started around 6:00 p.m. She could still hear the music at 8:30 p.m., but could no longer hear it at 9:30 p.m. M.M. indicated that she could see the tent from her property but did not believe the event was being held in the tent, rather in the outdoor area between the tent and to the west of the building. M.M. stated that the event was listed in the community event section on the venue website and was listed as Ivins Outreach Center event. Entertainment was to be provided by the "Reese Trouble Trio." She heard the sound of instruments, including an electric piano or keyboard (N.T.80-81).

25. On July 23, 2010, the complainant was at home and again heard noise from an event coming from the vineyard. The concert was advertised as the Karen Rodriguez Ensemble Latin Jazz. It was advertised on the website. On that evening, there were loud amplified vocals coming from a public address system, loud keyboards and drums. The music lasted until 9:30 p.m. The music was first heard about 7:30 p.m. During the course of the night, there was a loud crying noise, shouting and swearing that could be heard coming from the parking lot. On that evening, M. M. heard music on her deck and also inside the house, with the windows closed (N.T.81-82)

26. On July 24, 2010, there was a wedding outside in the vineyard. The ceremony began around 4:30 p.m. M.M. could actually hear the wedding ceremony and music that was being played. The reception started later in the evening with a live announcement of the wedding party. A speech was given by members of the wedding party. M.M. heard amplified music and disc jockey type music, loud crowd noise, yelling and the shouting of obscenities. The party continued until at least 9:30 p.m. (N.T. 82)

27. On August 6, 2010, a Friday evening, there was an advertisement on the vineyard website, which indicated a blue grass concert to be held at 5:30 p.m. The band was warming up and M. M. heard loud amplified banjo music, bass and vocals. The concert began around 7:00 p.m. and music was still being heard at 9:15 p.m. M. M. heard music on the deck and inside the house. The noise and music continued until 9:15 p.m. This event was held in the tent. The website advertises a wine and music concert series, which is held annually (N.T. 82-83).

28. On August 7, 2010, there was a wedding ceremony held at the vineyard. The wedding ceremony appeared to be completed at 5:00 p.m. From around 7:00 p.m., loud amplified music announcements and music from a disc jockey could be heard throughout the evening. The crowd noise consisted of clapping, screaming, whooping and yelling. The disc jockey incited the crowd. M. M. heard the disc jockey talking through a microphone. M. M. clearly heard music, such as "Billie Jean" by Michael Jackson, "I Know You Want Me" by Pit Bull and "Sexy" by Justin Timberlake. M. M. took notes contemporaneously with the events that were held. The music was extremely loud and annoying on this particular evening (N.T. 84).

29. On August 13, 2010, the website advertised an outdoor concert called Real Jazz, the Eric Mintel Quartet. M. M. heard amplified music around 6:20 p.m. and the concert started around 7:00 p.m. and continued until 9:10 p.m. There was loud public announcements and amplified music associated with that event. The music lasted until approximately 9:10 p.m. and crowd noise was heard until around 9:25 p.m. Cars in the parking lot were heard still leaving at 9:45 p.m. The event was held in the tent outdoors (N.T. 83-85).

30. On August 14, 2010, there was an advertised event on the vineyard website, the Guinness Book of World Records event. The complainant was able to hear music coming from inside the building from 2:00 p.m. to 2:45 p.m. The complainant indicated that there appeared to be a secondary event that was taking place, an outdoor wedding following by a wedding reception on that same day. As such, there was a quite a bit of noise with the running back and forth and yelling by parking attendants. M.M. was able to observe the activity from her property. There was a disc jockey associated with the wedding reception that started about 6:30 p.m. There was a lot of crowd noise, screaming and swearing. M.M. was able to hear music and crowd noise until approximately 10:15 p.m. At that point, people were heading to their cars and departing the premises (N.T. 85-86).

31. On August 20, 2010, there was a concert advertised at the vineyard, that is to say dancing favorites from the sixties and seventies. The band's name was Idlewoodsmen. The band could be heard warming up around 5:00 p.m. The complainant heard amplified vocals, drums and instruments as part of the warm-up. There was pre-recorded music that was being played around 6:40 p.m., which she could hear from her deck. The concert began a little after 7:00 p.m. with loud amplified announcements, vocals and instrumentals, which could be heard from her deck. In the tent, there was a loud crowd shouting and whooping along with the music (N.T. 86-87).

32. On August 28, 2010, there was a wedding that started at approximately 5:00 p.m. that was held outdoors. The reception moved to the tent where M. M. was able to hear loud music from the public address system. M. M. also heard the disc jockey with a loud crowd noise shouting, screaming, and clapping. At the end of the evening, there was a bus that came into the parking lot around 10:30 p.m. There was a person on the bus who was repeatedly screaming obscenities. There were a number of other patrons yelling and chanting as another person was getting on the bus. The chant was someone yelling over and over again, "Show your ass," and another person got on the bus and yelled, "I got alcohol." This took place at 10:30 p.m. on Saturday evening, August 28, 2010 (N.T. 89-90).

33. On September 5, 2010, there was an outdoor wedding at the vineyard. The ceremony began around 4:15 p.m. The reception moved to the tent where they were able to hear amplified music and a disc jockey throughout their property on the deck and inside, with the windows closed. Music started about 6:30 p.m. and the music lasted until approximately 9:50 p.m. There was crowd noise, yelling, screaming and clapping. The crowd noise continued until 10:15 p.m. (N.T. 90-91).

34. On September 11, 2010, there was an event in the tent that started about 1:00 p.m. M.M. heard crowd noise and shouting, but could not recall specifically hearing any music. There were buses pulling up to the vineyard that were part of the wine tour. M.M. observed one woman staggering, who came over to the fence and began throwing up. There was a man with her trying to help her. She appeared to be intoxicated. An employee came from the vineyard and offered her a bottle of Chardonnay. This activity occurred around 5:30 p.m. and continued for approximately 45 minutes or so (N.T. 90-92).

35. On September 16, 2010, M.M. arrived home from work and heard loud music at 7:24 p.m. She first noted the music inside her house, with the windows closed. There was an outdoor event in the tent at the vineyard that evening. She heard loud amplified keyboard music. She was still able to hear the music at 8:00 p.m. She left the house at that point and doesn't know when the music stopped (N.T. 93).

36. On September 18, 2010, there was an afternoon wedding. M.M. heard the noise related to the ceremony itself, as well as music from a string quartet (N.T. 93-94).

37. On September 25, 2010, M.M. arrived home at 7:30 p.m. to hear noise from a loud outdoor event, which included music and crowd noise. She heard music with the windows closed. On this occasion, she heard booming, repetitive dance music, the crowd singing, shouting and screaming. The music continued until just before 10:00 p.m. (N.T. 94-95).

38. On October 2, 2010 at approximately 8:40 p.m., M. M. was able to hear loud music from a public address system, announcements, amplified music, loud crowd music, shouting and screaming coming from a party in the tent at the vineyard. Music could be heard not only outside, but in the house with the windows closed. At 10:30 p.m. that evening, there were cars honking in the parking lot. The noise ceased by 10:30 p.m. (N.T.95-96)

39. On Sunday, October 10, 2010, M.M. heard music coming from the building of the vineyard at around 1:15 p.m. Later in the afternoon, there was an outdoor wedding ceremony. There was an opera singer associated with that event. M.M. could hear singing between 3:00 p.m. and 3:30 p.m. M.M. was also able to hear string music coming from the outdoor wedding ceremony around 4:30 p.m. On that evening, there was a reception in the tent with loud public address announcements. M.M. could hear the disc jockey from 6:00 p.m. until 10:00 p.m. with the crowd shouting and screaming. She noted that on this day, her family was watching a Phillies game inside on the television. Despite the fact that the windows were closed, they were able to hear the music over the Phillies game (N.T. 96).

40. On October 16, 2010, M.M. could hear harp music being played around 4:15 p.m. associated with a wedding at the vineyard. There was a reception at the tent on the vineyard property. There was loud amplified disc jockey type music and a public announcement that could be heard throughout the evening. Again, music could be heard inside the house with the windows closed over the Phillies game on television. In addition, they heard crowds shouting, whooping and singing along with songs being played. On this occasion, M.M.'s children had trouble sleeping, until the music stopped. There was also loud activity as the patrons were leaving the parking lot (N.T. 96-97).

41. On October 24, 2010, there was an advertised event at the vineyard, which was a birthday celebration relative to the vineyard. M. M. heard loud music, specifically an amplified guitar. She could hear it in the house with the windows closed. The music continued until about 9:30 p.m. M. M. was certain that the music was emanating from the vineyard, but was not certain as to exactly where this event was being held. M.M. indicated that most of the events occur in the tent, and in an outdoor area to the east of the tent (N.T. 98).

42. M.M. called the winery during events when the music was loud and asked for the music to be turned down. She indicated that more often than not, the music got louder rather than quieter. M.M. indicated that she had never spoken personally to the owner. She indicated she testified in front of the Planning Commission regarding concerns about the escalating numbers and intensities of events at the vineyard and that the owners are well aware of her concerns (N.T. 114-115).

43. M.E. resides on Longmeadow Drive in Newtown, Pennsylvania. M.E.'s property is adjacent to the land on which the licensed premise sits. M.E. is able to see the tent which sits on the winery's property and some of the bar and most of its auxiliary parking area. M.E. indicated that he has seen loudspeakers on the property. When the tent is up, you can see the speakers, but when the tent is closed you cannot see them. On August 7, 2010, around 9:00 - 9:30 p.m., M.E.'s child complained about not being able to sleep. Her bedroom is situated in the back of the house. The child sat on the back porch with M.E. and told him the names of artists, such as Keisha, Jay-Z, Justin Timberlake, Usher and others whose music was playing (N.T.118-119).

44. On August 28, 2010, M.E. was at his home at approximately 9:30 to 10:00 p.m., when he was disturbed by music coming from the vicinity of the licensed premises. On Friday, August 28, 2010 at approximately 6:30 p.m., the events began at the winery. M.E. heard announcements, cheering and then music being played. M.E. heard songs by Michael Jackson and Earth, Wind and Fire. M.E. recorded the information as the part of an ongoing complaint. Almost all of the events continue until about 10:00 p.m. M.E. has attempted to talk to the Licensees with regard to the noise. M.E. has the owner's mobile number. He also met at the Township building with the Planning and Zoning manager to try to sort through some of these issues. M.E. has attended four or five planning commission meetings, where he went through testimony and talked to the Board of Supervisors, at least four or five times, and with the owner of the licensed premises or a representative in attendance (N.T. 120-121).

45. M.E. was at his home on September 25, 2010 and at about 6:45 p.m., he heard music and at 7:00 p.m., he heard hooting and hollering. The announcer spoke frequently. When M.E. is sitting at his pool and talking to family or guests, he will hear announcements of the bridal party and others that could take from five to twenty-five minutes. The announcements are followed by music, cheering, hooting and hollering. M.E. is clear that the announcements are coming through a microphone (N.T. 121-122).

46. On October 2, 2010, M. E. heard an announcement coming from the winery, which could be heard on his property. At 6:45 p.m., there was cheering and laughing. At 8:22 p.m., the cheering was still going on. Because of the noise from the winery, he has not been able to use his pool for parties and guests, except during the day, because the events are generally held in the evening. Even with the windows closed, the music can be heard inside the house. While watching television, M.E. complained of feeling booms from the bass in the house and on the porch. M. E. has called 911 on many occasions to come to the backyard to listen to the music (N.T. 122-123).

47. On October 10, 2010 at 8:00 p.m., M.E. heard an announcement and patrons screaming. He attempted to call the owner of the winery and licensed premises. However, the voice mailbox was full. M.E. called the Upper Makefield Police Department and Crossing Vineyards. One of the policemen did come out, but informed him that he was powerless to do anything until after 10:00 p.m. At 6:50 p.m., the announcer began singing "I've Had the Time of My Life." The guests at the winery were singing along with him (N.T. 123-124).

48. On October 16, 2010 at 8:00 p.m., M.E. heard screaming from the premises and songs playing (N.T. 123-124).

49. M.K. is a resident of Longmeadow Drive. His property is located along the border of the vineyard property. M.K. has lived on the property since the end of 2000. On the night of September 11, 2010, M.K. was home in his backyard playing with his children. He noted that someone seemed to be having trouble walking in the upper parking lot at the vineyard. He saw a woman who was unable to walk by herself and who was leaning over and vomiting. He watched this scene for approximately a half an hour to see if anybody was going to help her. There was an individual with her. M.K. heard someone say to this woman, "You can't get your refund but you...here's a bottle of wine for you." This occurred late afternoon somewhere between 5:30 p.m. and 6:15 p.m. during a wine tour of the vineyard. M.K. remembers that there were two touring buses on that day. Although not every weekend, M.K. described the tours as being frequent with people getting on and off the buses at the vineyard (N.T. 131-135).

50. On September 16, 2010, during the evening hours, M.K. heard noise coming from the area of the licensed premises, which included the sound of an electric keyboard. M.K. indicated the music was coming from the outdoors and appeared to be coming from the tent. M.K. could hear people in the tent. The noise included loud conversations, screaming, applause, shouting and music depending on the type being played. On September 25, 2010 at approximately 7:30 p.m., there was an event at the vineyard and M.K. heard amplified music coming from that area. This event continued until approximately 9:45 to 10:00 p.m. After the music stopped, the people in the parking lot were yelling back and forth as they went to their cars. Sometimes there was screaming and sometimes horns were blowing (N.T. 135-137).

51. On October 23, 2010, there was another event where M.K. heard electronic keyboards and a piano that appeared to be coming from inside of the building instead of coming from the tent. M.K. indicated that beginning in 2002, there was an issue with the tent that was erected on his property. There were attempts to talk to the owner, but M.K. concluded that the talks were not fruitful. In 2005, M.K. attempted to engage the owner by calling the vineyard and asking to speak with him, but he was not able to reach him (N.T. 138-147).

52. N.E. did not appear in court, but an affidavit from N.E. indicates that her property is located 283 feet from the winery's property line, directly next to M.E., 699 feet from the licensed property and 696 feet from the event tent. She indicates that she has never been bothered by the noise or sound of music from the winery or observed disorderly conduct. S.E. is the husband of N.E. He submitted an Affidavit indicating he resides in the same home as N.E. and has never been bothered by noise or the sound of music coming from the winery.

53. E.H. submitted an Affidavit indicating that he resides in a carriage house apartment on the owner's property, which is 209 feet from the licensed premises and 59 feet from the tent where the concerts, weddings and events are held. He indicates that he has never been bothered by the noise or the sound of music from the winery or disorderly conduct (Exhibits L-2, L-3 and L-4).

54. S.S. is a state representative in the Pennsylvania General Assembly. The winery is located in his legislative district. He has been to the winery on a half dozen to a dozen occasions. From his observation, the premise is nicely run and aesthetically is a pretty property. The representative has worked with the winery in attempts to focus on renewable energy sources. He is familiar with the owners, T.C., C.C. and T.C., Jr. He has been inside licensed winery and outside of it in other areas of the vineyard (N.T. 149-152).

55. On September 16, 2010, S.S. attended an event at the vineyard. T.C. allowed a local non-profit from the Bucks County Performing Arts Center to have a fundraiser on the property. The event was held outside of the licensed premises in the tent, which is approximately 100 feet away from the building. During that event, there was entertainment provided by a small ensemble. There was a microphone and a couple of speakers inside the tent. He remained there for approximately two and a half hours. He did not observe anything that he would consider disorderly. He was able to converse with other people and was not prohibited from doing so by the volume of music. The ensemble continued to play during his stay. He does not recall hearing music in the parking lot. He would have arrived approximately fifteen minutes before the event began, which would have begun at 5:30 or 6:00 p.m. and would have stayed for fifteen or twenty minutes after it ended. Alcoholic beverages were served at this event, which was wine from Crossing Vineyards. He has no knowledge with regard to whether or not the surrounding neighbors were disturbed in their homes, on their decks or in their yards. (N.T. 149-157).

56. Sister Mary Smith visited the vineyard on October 24, 2010 for a wine tasting event, which was a fund raiser for the Alumni Association of St. Hubert's Catholic High School for Girls. M.S. described it as a small event which was held inside the winery. There was a disc jockey that played music at this event. M. S. indicated that while there was music being played, there was no difficulty in the participants being able to converse with one another. M.S. remained on the premises two to three hours. She did not leave the building during this event and was not disturbed by noise or disorderly behavior during the event. There was an auction held during the event which concluded between 9:00 and 9:30 p.m. The music was just background music. There was an auctioneer, but he did not use a microphone (N.T. 158-167).

57. J. M. is a resident of Longmeadow Drive. His home is adjacent to the northern side of the winery. He has lived in this residence since November, 2009. J.M. has attended events at the winery and has a couple of parties there, such as a wine tasting and holiday parties. He attended the wedding of a friend at the vineyard. From his home, the actual licensed premises, is obscured by trees, but he is able to see the tent. J.M. has not been disturbed by music or noise from the premises. J.M. has never witnessed anything at the vineyard, which he would consider noisy or disorderly behavior. J.M. is a member of the wine club, where he pays an annual or quarterly fee and different wines are presented for him to taste (N.T. 167-175).

58. E.M. has a jazz quartet consisting of a piano, drums, alto saxophone and upright bass and at times uses an electric bass. He has performed at the vineyard thirty to forty times in and around the area of the tent. He has also performed inside the licensed premises. The last few times that the band has performed, they have used an acoustic piano and have not used amplification. He could not describe any of the events where he played as being loud or disorderly. E.M. has indicated that at the last concert where he played, he did not use amplification. He could not recall whether or not on August 13, 2010, there was any use of microphones. He did indicate, however, that there is a *monitor of sorts to lift the sound of the bass* (N.T. 176-186).

59. G.C.T. owns a sound company, Articulate Pro Audio, in Glen Rock, PA and has been in that business since 1993. G.C.T. has forty years of experience in the sound field. He was contracted by the owner of the licensed premises in the spring of 2010. He consulted with the owner to come up with a plan to resolve the issues of noise from that premises. His goal was to insure that the noise did not exceed 55 decibels at any point on his property line in compliance with the Upper Makefield Township Ordinance. There is a measurement unit that is put on the loudspeakers to insure that the music and frequency does not go above that which was required by the ordinance. The equipment was installed between the end of April and the beginning of June, 2010. The equipment is called a Drive Rack PA Plus and it's a loudspeaker management system. It allows you to control the output of the sound system. The equipment has a compressor to limit the sound. The equipment was not tested during an event, but was tested with the maximum output when the tent was open. If music was played through the sound system, the decibel would not be 55 in compliance with the Ordinance. The decibel readings were last checked at the property line in 2010. This witness is not familiar with the regulations of the Liquor Control Board (N.T. 188-206).

60. R.H. resides on the Washington Crossing Vineyard in a cottage. Her residence is located between the driveway for the winery and T.C.'s property, the closest resident to the tent. She has resided on the property for three years. During that time, she has not observed any noisy or disorderly behavior by patrons. She can hear sound coming through the tent, but it is not to the extent that it is disrupting her quality of life. She has not been to any of the weddings, but has been to some of the concerts (N.T. 207-237).

61. D.H. is affiliated with the Ivins Outreach Center. On July 18, 2010, the organization had a fundraiser down at the vineyard. He observed a keyboard, a bass fiddle and a saxophone. The keyboard was attached to an amplifier. The event itself was from 6:00 to 9:00 p.m. The witness would not describe the event as loud and he was able to converse with people sitting next to him. Items which were being bid on were for fundraising purposes. He did not see anyone using a microphone or a public address system (N.T. 227-229).

62. T.C. filed an application for approval of a limited winery in Pennsylvania in 2000. The winery has been open since October 10, 2003. Between 2000 and 2003, there has been extensive planning and renovations of the existing building. The property is approximately twenty acres and has multiple uses, residential use, rental use, the vineyard property is also for events and there is also a bridal suite on the property.

63. T.C. wanted to license only the minimum amount that was required to make him sell wine, which is one building which he describes as the winery. Only the first floor of the building is licensed. The room upstairs known as the vineyard room is not licensed. Events are also held in a tent on the vineyard property. The tent has heavy duty sides. It is vinyl in which a glass door has been installed. The tent is not licensed by the Pennsylvania Liquor Control Board (N.T. 230-238).

64. T.C. claims that during weddings, the licensed premise is closed. During the music series, the winery was open prior to the June 3, 2011 meeting when T.C. learned about the requirements of Section 5.32 of the Liquor Control Board Regulations. At that point, he hired contractors and unplugged the musical equipment. T.C. ran into problems because some of the musicians would not play unless they were amplified. Therefore, he claims to have closed the winery whenever there was any use of loudspeakers. There were approximately a dozen events in 2012. The majority of those were unamplified. A few of them used loudspeakers and they made attempts to limit the noise. Alcohol is served during the weddings, but the alcohol at weddings is presold. Additional alcohol is not allowed to be brought onto the premises after the start of the wedding. There is supposedly no sale of alcohol during the weddings. Although T.C. was warned about the use of loudspeakers inside the licensed premises, he was not aware immediately of any problem with any speakers outside the premises (N.T. 230-242).

65. In 2011, where there was amplified music, the winery was supposedly closed. It was open when there was no use of loudspeakers. When the concert started, the winery closed. However, it did open back up during intermissions (N.T. 242).

66. T.C. indicated that on the dates charged, music was only played inside the premise on October 15 and October 24, 2010 (N.T. 258).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On July 16, 23, 24, August 6, 7, 13, 14, 20, 28, September 5, 16, 25, October 2, 10, 15, 16 and 24, 2010, Licensee, by its servants, agents or employes, used, or permitted to be used, 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 - On July 16, 18, 23, 24, August 6, 7, 13, 14, 20, 28, September 5, 11, 16, 25, October 2, 10, 15, 16, 23 and 24, 2010, the licensed establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471.

CITATION NO. 12-0311
COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. D.D. conducted an investigation of the licensed winery, visiting the premises in an undercover capacity on August 19, 2011 at approximately 7:40 p.m. The officer noted that there was an event being held in a tent area. The officer noted a four piece band performing with bongo drums, an electric guitar, and an acoustical guitar and flute, both of which had microphones attached to them. The music was being played through speakers in the tent. The officer saw individuals moving between the licensed winery and the tent. The officer left the premises and went to a complainant's house, who was a resident of the area. It was raining and the officer could not hear music over the rain. The officer went to another complainant's house, but no one was at home. The officer went to another complaint's house and on the deck of the home of M.M. could hear a flute and music that the officer identified as the same music that he had heard playing in the tent on the vineyard property. The officer spoke a number of times with T.C. and his son with regard to the complaints (N.T. 297-304).

2. D.L. is a resident of the area surrounding the licensed winery. On June 17, 2011, from her home, D.L. heard loud base and thumping sounds from a concert at the licensed premises. The level of noise increased throughout the night. D.L. could hear the noise over her two water fountains. Again on June 18, 2011, D.L. was disturbed by music and noise from an event at the licensed premises. She could hear a loud bass, thumping and songs that she believed was being played by a disc jockey. She also heard cheering and yelling. On June 24, 2011, D.L. heard music in the nature of jazz vocals and the noise of people from an outdoor concert at the licensed premise (N.T. 306-308).

3. On July 15, 2011, from her residence, D.L. heard noise and country music from the Dan May Band, performing on the licensed premises. On July 29, 2011, D.L. heard instruments, which she believed to be a saxophone, a high pitched instrument which may have been a flute and thumping from the bass, coming from a jazz concert being held on the licensed premises. On August 12, 2011, from her home, D.L. heard banjos, cheering and clapping coming from an outdoor concert, the Cosgrove Bluegrass Band, at the licensed premises (N.T. 308-309).

4. M.M. is a resident in the community. On June 17, 2011, she was at her home, with the windows closed and heard loud jazz music, which she believed to be the Eric Mintel Quartet, in the nature of a saxophone, drums, base and piano, coming from the area surrounding the licensed premises. On June 18, 2011, M.M. heard loud, amplified, prerecorded music and loud noises from the crowd, which included screaming and laughing. The noise could be heard inside her home over the air conditioner. On June 24, 2011, she heard loud music, which she believed to be jazz vocals, with an electric keyboard from a concert held at the vineyard (N. T. 310-313).

5. On July 8, 2011, M.M. stated that there was an outdoor concert in the area of the vineyard. It was advertised on the vineyard's website as the Opera of New Jersey. From her home, the complainant heard loud operatic singing and a piano. It was raining, but the sound could be heard over the rain. On July 15, 2011, the vineyard advertised the Dan May band as a part of their wine and music series. The vineyard website music was described as country with a twist. That night, M.M. heard *very* loud music, drums, a harmonica and announcements inside her home from 7:25 p.m. until approximately 10:05 p.m. On July 29, 2011, there was an outdoor concert on the vineyard property. The band was Minus and the music was described as Brazilian jazz vocals. M.M. heard a loud saxophone, loud flute and an electronic keyboard. The saxophone could be heard inside the home, with the windows closed (N.T. 313-315).

6. On August 26, 2011, there was a wedding at the vineyard, in the tent. M.M. heard a loud rowdy crowd yelling, whooping and screaming. In addition M.M. heard loud amplified music, which continued until 10:00 p.m. M.M. indicated that the disc jockey events were particularly loud. At approximately 10:00 p.m., there was an altercation between two patrons in the parking lot. They were loud and verbally abusive, screaming and swearing. M.M. phoned the police. When the police arrived at 10:15 p.m., the parties got into their cars and drove away (N.T. 316-318).

7. According to the vineyard's website, there was a concert scheduled for September 9, 2011. It was advertised as the Fabulous Grease Band '50s, '60s and '70s rock and roll. At 9:30 p.m., M.M. heard amplified vocals and keyboard music playing various selections. The music could be heard inside of her home until 9:45 p.m. and the shouting, singing and loud noises from the crowd could be heard until 10:00 p.m. (N.T. 317-318).

8. M.K. is a resident in the area of the vineyard. On June 17, 2011, beginning at about 6:15 p.m. he heard a jazz band warming up. The music could clearly be heard from the deck of his home. At approximately 7:30 p.m., he was able to hear amplified music in the nature of a keyboard and bass. The music could be heard inside of M.K.'s house, with the windows closed. On June 18, 2011, there was a wedding at the vineyard, which began at about 4:30 p.m. M.K. could hear the ceremony and at 7:30 p.m., a disc jockey began to play recorded music. He was able to recognize several of the songs being played. On June 24, 2011, M.K. heard sound checks through microphones at about 6:15 p.m.; later, from his deck, he heard an accordion and keyboards being played (N.T. 321-323).

9. On July 15, 2011, at about 7:20 p.m., M.K. heard the sound of an announcer, and an electric guitar coming from the vineyard. The music and noise could be heard on the deck and inside the house. August 12, 2011, from about 6:00 p.m., M.K. could hear the sound of a banjo, other instruments and vocals coming from the area of the vineyard. The music could be heard inside his home. On August 26, 2011, M.K. heard amplified music. During the evening, he heard screaming and abusive language, which was seemingly an altercation between a man and a woman. He contacted the police. The argument continued for about 15 minutes, until the police arrived. On September 9, 2011, M.K. was again disturbed by a disc jockey playing music in the tent at the vineyard until about 9:30 p.m. M.K. believes that the music was amplified (N.T. 323-328).

10. M.E. resides in the vicinity of the licensed vineyard. On June 17, 2011, he heard amplified music being played at the vineyard from 7:00 p.m. to 10:00 p.m. On June 18, 2011, M.E. heard an announcer over a loudspeaker speaking at length on more than one occasion. He also heard cheering and clapping throughout the evening, from 7:00 p.m. to 10:000 p.m. coming from the vineyard. On June 25, 2011, in the early evening, he and his family were around their pool when he heard loud amplified music and announcements coming from the vineyard. They were so disturbed that they went into their house and shut the doors (N.T. 328- 331).

11. On September 9, 2011, M.E. heard loud amplified music from the tented area of the vineyard inside his home. The noise lasted throughout the dinner hour and into the evening. On September 10, 2011, M.E. heard loud amplified music coming from the area of the vineyard. M.E. stated that his daughter was having a sleepover. She and her guests left their pool because of the loud music and noise coming from the vineyard (N.T. 331- 334).

12. T.C. filed an application for approval of a limited winery in Pennsylvania in 2000. The winery has been open since October 10, 2003. Between 2000 and 2003, there has been extensive planning and renovations of the existing building. The property is approximately twenty acres and has multiple uses, residential use and rental use. The vineyard property is also for events and there is also a bridal suite on the property. T.C. wanted to license only the minimum amount that was required to allow him to sell wine. The one licensed building he describes as the winery. Only the first floor of the building is licensed. The room upstairs known as the vineyard room is not licensed. There is an unlicensed area on the vineyard property, which has a tent on it. The tent has very heavy vinyl sides and a glass door has been installed in it (N.T. 230-291).

13. After a June 3, 2011 meeting with the Pennsylvania Liquor Control Board, where they spoke about amplification and the use of loudspeakers, T.C. purchased an acoustic piano. Licensee indicated that on June 17, 2011 the Eric Mintel Quartet performed in the tent. On June 18, 2011, there was a wedding, in the tent or other unlicensed portion of the premises that did use amplification. On June 24, 2011, the Hot Club of Philadelphia performed off the premises, in the tent. On July 8, 2011 the Opera of New Jersey performed. On July 15, 2011, there was a performance at the tent using amplification. On July 29, 2011, there was Brazilian music being played, again in an off premises location On August 12, 2011, the Mark Cosgrove band performed in the tent. On July 19, 2011, the licensed portion of the premises was closed, but a group performed off the premises. On August 2, 2011, the Upper Princeton Swing Quartet played for the Autism Cares event. On September 9, 2011, the Grease Band played off premises and the licensed premises was closed. T.C. was unaware of any altercations. T.C. claims to have closed the winery whenever there was amplified music being played. (N.T. 358-367).

14. J. M. is a resident of Longmeadow Drive. His home is adjacent to the northern side of the winery. He has lived in this residence since November, 2009. J.M. has attended events at the winery and a couple of parties there, such as a wine tasting and holiday parties. He attended the wedding of a friend at the vineyard. He can see the tent, which is on the same property as his home. The actual licensed premises, however, is obscured by trees but he is able to see the tent. J.M. has not been disturbed by music or noise from the premises. J.M. has never witnessed anything at the vineyard which he would consider noisy or disorderly behavior. J.M. is a member of the wine club, where he pays an annual or quarterly fee and different wines are presented for him to taste (N.T. 167-175).

15. E.M. has a jazz quartet consisting of a piano, drums, alto saxophone and upright bass and at times they also use an electric bass. He has performed at the vineyard thirty to forty times in and around the area of the tent. He has also performed inside the licensed premises. The last few times that the band has performed, they have used an acoustic piano and have not used amplification. He could not describe any of the events where he played as being loud or disorderly. E.M. has indicated that at the last concert where he played, he did not use any amplification. He did indicate, however, that there is a monitor of sorts to *lift the sound for the bass* (N.T. 176-186).

16. G.C.T. owns a sound company, Articulate Pro Audio, in Glen Rock, PA and has been in that business since 1993. G.C.T. has forty years of experience in the sound field. He was contracted by the owner of the licensed premises in the spring of 2010. He consulted with the owner to come up with a plan to resolve the issues of noise from that premises. His goal was to insure that the noise did not exceed 55 decibels at any point on his property line in compliance with the Upper Makefield Township Ordinance. There is a measurement unit that is put on the loudspeakers to insure that the music and frequency does not go above that which was required by the ordinance. The equipment was installed between the end of April and the beginning of June, 2010. The equipment is called a Drive Rack PA Plus and it's a loudspeaker management system. It allows you to control the output of the sound system. The equipment has a compressor to limit the sound. The equipment was not tested during an event, but was tested with the maximum output when the tent was open. If music was played through the sound system, the decibel would not be 55 in compliance with the Ordinance. The decibel readings were last checked at the property line in 2010. This witness is not familiar with the regulations of the Liquor Control Board (N.T. 188-206).

17. R.H. resides on the Washington Crossing Vineyard in cottage. Her residence is located between the driveway for the winery and T.C.'s property, the closest resident to the tent. She has resided on the property for three years. During that time, she has not observed any noisy or disorderly behavior by patrons. She can hear sound coming through the tent, but it is not to the extent that it is disrupting her quality of life. She has not been to any of the weddings, but has been to some of the concerts (N.T. 207-237).

18. M.G. approached T.C. a little over a year ago to make a donation to a non-profit organization, Autism Cares Foundation. His idea was to have a gala with wine tasting and an auction. M.G. had an event on August 21, 2011 at the tent. He indicated that the jazz quartet was playing, but denies that there was any use of loudspeakers. The event was from 4:00 to 6:00 p.m. The Princeton Swing Collective played on that day. He did not note any noisy or disorderly conduct during the event (N.T. 215-224).

19. D.M. is a singer and songwriter. He also has a six piece folk band and uses an acoustic bass and guitar. D.M. plays a saxophone and clarinet. On July 15, 2011 his band performed at the vineyard, in the tent. They used what was described as a small column, with directional speakers/monitors, rather than amplifiers. D.M. claims that the volume was extremely low. D.M. claims that a passing car radio was in fact louder than their band and that he could not hear the music outside the tent. D.M. also played on either August 21 or 23, 2011 and claims to have used no amplification. He did not indicate whether or not he utilized the monitor or directional speakers (N.T. 338-345).

20. D.J.H. is affiliated with an Opera company and has performed in 2010 and July of 2011, at the vineyard. He did not recall the specific dates. He indicated that he was not there for the entire event. While he was there, the performers used only an acoustical piano, but no microphones (N.T. 346-350).

21. B.W. is the leader of the Hot Club of Philadelphia, an acoustic Gypsy Jazz Band. The music is inspired by Louis Armstrong and is a mixture of gypsy and French styles. On June 24, 2011, the group performed at the tent at the vineyard. They claimed to have used no amplification. He indicated that they played for 40 minutes, then took a break and played for another 30 minutes. He indicated that they were at the premises a total of about two and a half hours. They observed no noisy or disorderly conduct while at the premises (N.T. 353-357).

CONCLUSIONS OF LAW:

Count No. 1 - On June 17, 18, 24, July 8, 15, 29, August 12, 19, 21, 26, September 9 and 10, 2011, Licensee, by its servants, agents or employees, used, or permitted to be used, 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 - On June 17, 18, 24, July 8, 15, 29, August 12, 19, 21, 26, September 9 and 10, 2011, the licensed establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, 47 P.S §4-471.

PRIOR RECORD:

Licensee has been licensed since May 18, 2002, and has a record of prior violations as follows:

In Re:

Citation No. 04-2008. \$100.00 fine.

1. Delinquent in filing required monthly reports on Form PLCB-1676.

DISCUSSION:

I. Preliminary Objections

A. Bureau's Objection to Licensee's New and Additional Legal Representative

On the day of hearing, the Bureau attorney was advised that an additional attorney was entering his appearance on behalf of the Licensee and would be representing Licensee in the hearing. The Bureau raised objections to new counsel, a licensed attorney and Pennsylvania state representative, arguing that counsel should not be permitted to represent the Licensee, citing reasons of conflict of interest and the potential for undue influence. In response to the Bureau's Motion, the Court inquired as to whether the General Assembly had by law restricted its members from acting as legal counsel and/or whether counsel's position as a state representative and member of the House Liquor Committee would be an impediment or otherwise restricted his ability to represent the Licensee in the Citation matter before the Office of Administrative Law Judge for the Pennsylvania Liquor Control Board. Counsel indicated that he was not precluded from the practice of law or liquor law, was not aware of any such restrictions and had no conflict.

The Court subsequently reviewed The Public Official and Employee Ethics Act, Chapter 11, Ethics Standards and Financial Disclosure, which states in part:

§1103. Restricted activities

- (a) Conflict of interest.--No public official or public employee shall engage in conduct that constitutes a conflict of interest.

Conflict of interest is defined at §1102 as follows:

"Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimus economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

Seemingly, the General Assembly has not precluded its members from the practice law and here no actual conflict was alleged so as to violate the Ethics Act. The Court was reluctant to deny Licensee its choice of legal representation and did not want to delay what was obviously to be a lengthy hearing with numerous witnesses present and waiting to testify. For the aforementioned reasons, the Court overruled the Bureau's objections and permitted Licensee's counsel(s) of choice to represent it. The Court cautions that where one has the duty to uphold the public trust and a concurrent duty to zealously represent one's client, so long as those interests are the same, there may be no conflict, but inherent in that scenario is the potential for those interests to be or to become diverse.

B. Licensee's Motion to Dismiss

First, Licensee alleged the citation/hearing was untimely pursuant to Section 471 of the Liquor Code, 47 P.S. §4-471 that the Bureau of Enforcement may, within one year from the date of violation or cause appearing, cite a licensee to appear before an administrative law judge, not less than ten nor more than sixty days from the date of the sending of the citation. The Bureau of Enforcement conducted an investigation of the licensed premises, which began August 10, 2010 and concluded June 14, 2011. Pursuant to §4-471 a timely Notice of Violation was sent to the licensed premises by certified mail on June 17, 2011. The Bureau issued a Citation to the Licensee and sent it by certified mail to the licensed premises on July 15, 2011, within the one year from the date(s) of violation in accordance with the requirements of the statute.

The language of the Liquor Code requiring that the Bureau cite the Licensee to appear before the administrative law judge in *not less than 10 nor more than sixty days* from the sending of Citation has been found to be directory rather than mandatory since the scheduling of hearings is not within the purview of the Bureau. ***Bureau of Enforcement, Pennsylvania State Police, Bureau of Liquor Control Enforcement v. General Davis, Inc.***, 643 A2d 670 (Pa. 1994) (The timing of the notice of hearing is not subject to §471(a). The OALJ issues a notice of administrative hearing setting a hearing date consistent with the caseload and facilities of its office).

In addition, Licensee's counsel asked that the Citation(s) be dismissed in that the Bureau did not warn Licensee about noise outside of the premises before issuing a notice of violation and citation. There is no statutory requirement for a warning to be issued prior to issuing citations alleging violations of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a) or Section 471 of the Liquor Code, 47 P.S. §4-471 (other sufficient cause).

Counsel raises various complaints about the language of the Citation, for instance, in one case it specifies that there is noise from a source inside the licensed premises, while the dates of violation alleges that noise is coming from sources inside and outside the premises. The motion to dismiss on those grounds is denied in that the language of the charge is not controlling, it is rather whether the Licensee was timely and sufficiently apprised of the charges against it. Licensee was timely made fully aware of the allegations surrounding the charges.

The Court found that here the language of the citation is adequate for purposes of providing the Licensee adequate notice of the charges against it. The law recognizes that the Bureau has wide latitude in the generality of its charges, *Pennsylvania Liquor Control Board v. Reda*, 463 A.2d 108 (Pa. Cmwlth. 1983). As long as the Bureau puts the Licensee on notice that the particular activity is being challenged as illegal, due process will be satisfied and violations are sustainable. *See BLCE v. Grimoaldo Castrechini and Rosa Castrechini, t/a Aldo's Place*, Case No. 87-2864.

The Licensee further complains of the catch-all language of §4-471 as it pertains to the charge of noisy and disorderly operations. *See Appeal of Ciro's Lounge, Inc.* 358 A.2d 141 (Pa. Cmwlth. 1976) wherein the Court held that the language of §4-471 is broad enough to include noisy and disorderly conduct generally. Nevertheless, the Bureau still has the burden of proving by a clear preponderance of evidence that the violations occurred. *Pa. Liquor Control Board v. PPC Circus Bar, Inc.*, 506 A.2d 5211 (Pa. Cmwlth. 1986); *In Re: Omicron Enterprises*, 449 A.2d 857(Pa. Cmwlth. 1982). *Also see Appeal of Centinis License*, 59 Lanc. L.R. 105 (1964). The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. *Black's Law Dictionary, Fifth Edition*, West Publishing Company, Copyright 1979, Page 1064.

II. Legal and Factual Analysis

A. *Use of Loudspeakers and Noisy and Disorderly Operations*¹

¹ Licensee was charged under Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), for permitting use of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard *outside* the premises and under Section 471 of the Liquor Code, 47 P.S. §4-471 *other sufficient causes*. Section 4-493(34) of the Liquor Code, 47 P.S. §4-493(34), relative to noise, states that there is no violation unless the music or other entertainment or advertisements can be heard beyond the licensee's property line. However, Section 4-493 states that when the term "licensee," is used in that section it "shall mean those persons licensed under the provision of Article IV, unless the context clearly indicates otherwise." Licensee is a limited winery and is licensed under Article

Licensee complains that the Bureau has no authority to regulate conduct which is off or outside of the licensed premises. However, the facts established that in some instances music was being played off the licensed premises, but still for the benefit and enjoyment of Licensee's patrons. Off premises conduct may be chargeable to a Licensee where there is a nexus to the licensed business. Music being played off the licensed premises or outside of the premises, for the benefit and entertainment of Licensee's patrons, may be chargeable to the licensee. *See PSP, BLCE v. Goodfellas, Inc.*, 850 A.2d 868 (Pa. Cmwlth. 2004).

A Licensee has a duty to see to it that what goes on inside licensed premises does not spill over to the outside so as to cause an unreasonable disturbance in the community. If a Licensee's business practice creates an environment ripe for noisy/disorderly conduct then a violation has been established.

Neighbors complain of live and prerecorded music, with some degree of amplification, thumping of the bass, crowds, noise, altercations, vomiting guests, announcements, clapping, singing, yelling, screaming and the shouting of obscenities and horns blowing repeatedly, over an extended period of time. Even if the Court believed Licensee's claims that he opens and closes the licensed premises so that wine is not sold during these events, the evidence suggests that the selling of wine is an intricate part of all the offending events to include wine tours, concerts and weddings. On the two occasions when officers went to the licensed premises, it was noted that the winery was open. A Bureau officer indicated that patrons were moving between the tent and winery. The concerts are also advertised as wine and concert series.

It is noted that on the nights of the officers visits, music was amplified although not extremely loud, nevertheless, could be heard on the residents property adjacent or in the vicinity of the licensed premises. Residents complained of being disturbed by loud music and crowd noise. The township requires that music be below 55 decibels. However, the regulation of the Liquor Board requires one to contain music within the boundaries of its premises. While the premises may not be that typically thought of as a public nuisance, unfortunately, its activities are disturbing to some of the neighborhood residents, who are entitled to the quiet enjoyment of their property.

V. Ostensibly, 47 P.S. §4-493(34), is inapplicable. In addition, there was evidence which indicated music was heard beyond Licensee's property line.

Crossing Vineyards and Winery, Inc.
In Re: Citation Nos. 11-1226 & 12-0311

PENALTY:

Section 514 of the Liquor Code, 47 P.S. §5-514, prescribes a penalty of suspension or revocation of license for violations of the type found in this case. However, Section 516 of the Liquor Code, 47 P.S. §5-516 provides that in those cases where the Administrative Law Judge shall suspend a license for less than one hundred (100) days, the Administrative Law Judge may accept from the Licensee an offer in compromise as a penalty in lieu of such suspension and shall thereupon rescind its order of suspension. In the case of a winery Licensee, the offer in compromise shall be at the rate of fifty dollars (\$50.00) for each day.

Therefore, penalties shall be assessed as follows:

Citation No. 11-1226

Count No. 1 - five days suspension.

Count No. 2 - five days suspension.

Citation No. 12-0311

Count No. 1 - five days suspension.

Count No. 2 - five days suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that the Winery Liquor License of Crossing Vineyards and Winery, Inc., License Number LK-164 (including all permits and Licensee Discount Card), be suspended for a period of twenty (20) days **BEGINNING** at 7:00 a.m. on Monday, August 12, 2013 and **ENDING** at 7:00 a.m. on Sunday, September 1, 2013.

Licensee is directed on Monday, August 12, 2013 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

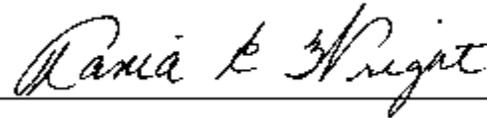
The Licensee is authorized on Sunday, September 1, 2013 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Crossing Vineyards and Winery, Inc.
In Re: Citation Nos. 11-1226 & 12-0311

Upon petition of Licensee's counsel, to be received within 15 days of the mailing date of this Adjudication, the Administrative Law Judge may accept from the Licensee an offer in compromise, at the rate of Fifty Dollars (\$50.00) for each day, i.e. One Thousand Dollars (\$1,000.00), as a penalty in lieu of the twenty (20) day suspension and shall thereupon rescind its Order of Suspension.

Jurisdiction of this matter is retained.

Dated this 24TH day of APRIL, 2013.



Tania E. Wright, J.

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.

If you wish to appeal the decision on the Administrative Law Judge's Order, the appeal must be filed within 30 days of the mailing date of the Order. Please contact the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

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Detach Here and Return 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.** 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

In Re: Citation Nos. 11-1226 & 12-0311
Crossing Vineyards and Winery, Inc.