

Mailing Date: FEB 13 2013

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

|                            |   |                                |
|----------------------------|---|--------------------------------|
| PENNSYLVANIA STATE         | : |                                |
| POLICE, BUREAU OF          | : | IN RE: CITATION NO. 12-1098    |
| LIQUOR CONTROL ENFORCEMENT | : |                                |
|                            | : | BLCE INCIDENT NO. W03-443700   |
|                            | : |                                |
|                            | : |                                |
| v.                         | : |                                |
|                            | : |                                |
|                            | : | PLCB LID - 61256               |
| TATE SPIRIT, LLC           | : |                                |
| 1002 CUMBERLAND ST.        | : | PLCB LICENSE NO. R-AP-SS-11724 |
| LEBANON, PA 17042-5173     | : |                                |

**ADJUDICATION**

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL PIETRZAK  
LICENSEE: JAMES A. SNELL, ESQUIRE**

BACKGROUND:

This proceeding arises out of a citation that was issued on July 19, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against TATE SPIRIT, LLC, License Number R-AP-SS-11724 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(34) of the Liquor Code [47 P.S. §4-493(34)] in that on April 14 and June 10, 2012, 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 beyond the licensee's property line.

The investigation which gave rise to the citation began on March 2, 2012 and was completed on July 5 2012; and notice of the violation was sent to Licensee by Certified Mail on July 10, 2012. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 10, 2013 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:

1. On April 14, 2012 at 12:15 a.m., an officer of the Bureau arrived in the vicinity of the licensed premises (N.T. 8).

2. The officer parked his vehicle on the opposite side of Cumberland Street from the licensed premises, and about 10 yards west of the licensed premises (N.T. 8).

3. The officer exited his vehicle and immediately heard music coming from the licensed premises (N.T. 9).

4. The officer walked along Cumberland Street to the intersection which formed the corner where the licensed premises was located. He crossed Cumberland Street and entered the licensed premises (N.T. 9).

5. Upon entering the licensed premises, he observed a DJ set up in the dining area. The music provided by the DJ was amplified through loudspeakers (N.T. 10).

6. The officer departed the licensed premises at 1:15 a.m. and returned to his vehicle. Upon reaching his vehicle, he could still hear music emanating from the licensed premises (N.T. 10-11).

7. On June 10, 2012, the officer again arrived at the licensed premises at 1:05 a.m. He parked his vehicle on Cumberland Street approximately 100 feet west on the same side of Cumberland Street as the licensed premises (N.T. 12).

8. Upon exiting his vehicle, the officer could hear music emanating from the licensed premises (N.T. 12).

9. The officer paced approximately 180 feet west from his vehicle away from the main entrance of the licensed premises until he could no longer hear the music (N.T. 12). In the course of pacing west, the officer passed at least three single family homes (N.T. 13).

10. The officer entered the licensed premises and observed that a DJ was providing music for the entertainment of patrons. The music provided by the DJ was amplified through loudspeakers (N.T. 13).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The testimony of the officer in this case, which I find to be credible, establishes that on each of the dates in question the officer heard music played through loudspeakers which could be heard beyond the property lines of the licensed premises. I therefore conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since March 13, 2009, and has had one prior violation:

IN RE:

Citation No. 12-0048X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. November 4 and 18, 2011.

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 a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee TATE SPIRIT, LLC, pay a fine of \$250.00 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 8<sup>TH</sup> day of February, 2013.



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.**

**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**

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

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

IN RE: CITATION NO. 12-1098  
TATE SPIRIT, LLC