

Mailing Date: DEC 13 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 12-1534
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-447818
v.	:	
	:	
ARMSTRONG VALLEY VINEYARD &	:	PLCB LID No.: 63840
WINERY, LLC	:	
T/A ARMSTRONG VALLEY VINEYARD	:	
AND WINERY	:	PLCB License No.: LK-304
212 RUTTER RD.	:	
HALIFAX, PA 17032-9441	:	

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE: Jacob P. Gruver, Partner and Manager

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on October 25, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Armstrong Valley Vineyard & Winery, LLC (Licensee).

The citation charges Licensee with violations of Section 493(34) of the Liquor Code [47 P.S. §4-493(34)]. The charge is that Licensee, by your servants, agents, or employees, used, or permitted to be used on the inside and/or outside of your 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, on May 12, July 20, August 3, 4 and 10, 2012.

Licensee has executed a Statement of Waiver, Admission and Authorization in which Licensee: admits to the violations charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts as provided by the Bureau and prior Adjudication history, and waives the right to appeal this Adjudication.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. On the dates charged, a resident was disturbed by amplified music escaping the premises.
2. On June 18, 2012, after the first violation of May 12, 2012 and before the second violation of July 20, 2012, a Bureau Enforcement Officer Supervisor contacted Licensee's Manager. The Supervisor advised the Manager that the Bureau received a complaint about loud music. The Manager indicated the problem would be taken care of.

CONCLUSION(S) OF LAW:

I sustain the violations as charged.

PRIOR RECORD:

Licensee has been licensed since August 17, 2010, and has no prior Adjudications.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 516(a) [47 P.S. §5-516(a)] prescribes a penalty of license suspension, or revocation, for the violations found herein.

Discretionary Component(s)

Licensee's Members, Mr. Gruver and Mr. Miller, jointly submitted a letter of explanation and mitigation along with an Admission, Waiver and Authorization.

On December 3, 2012, I convened a telephone conference call in which Bureau counsel, Mr. Gruver, and Mr. Miller participated. I did so because in their jointly endorsed letter, the two accepted responsibility, yet challenged the resident's motivation to file a complaint; they also attempted to diminish the seriousness of these violations by offering the opinion of a State Police Trooper who was called to the scene during a disturbance. The pair allege the Trooper found the sound level to be acceptable.

In their letter, the pair also assert that they are making "every effort (and continue to do so) to reduce or eliminate" any disturbance. Mr. Gruver and Mr. Miller have made correcting this problem more difficult than it needs to be. The only effort required is to turn down or shut off the volume. In my experience, true contrition and acceptance of responsibility is never accompanied by disparaging another or pooh-poohing the significance of unlawful conduct.¹

Because the parties jointly recommended the imposition of a fine, the conference call discussion switched to the penalty restrictions applicable to Article V, Liquor Code licensees. As noted in the immediately preceding Section, under the heading of Mandatory Requirement(s), an Administrative Law Judge has no authority to impose a fine.

However, Liquor Code Section 516 [47 P.S. §5-516] grants an Administrative Law Judge discretionary authority to accept an offer in compromise in lieu of a suspension, subject to the restriction that no such offer may be accepted if the suspension exceeds 100 days. Liquor Code Section 516 further provides three formulae, each of which is to be applied to a specific Article V licensee, as a way of fixing and normalizing the dollar value of an offer in compromise amount. For Limited Wineries, an Administrative Law Judge **may** accept such an offer at the rate of \$50.00 per suspension day.

As the conference call ended, I advised the parties of my intention to impose a seven days suspension. In response, Mr. Gruver and Mr. Miller orally extended an offer in compromise of \$350.00, which I then accepted, subject to the restrictions in the paragraph immediately preceding the Order.²

¹ Licensee provided the entertainment in question without an Amusement Permit. During the conference call, I advised Mr. Gruver and Mr. Miller that, if they called the Pennsylvania Liquor Control Board, they would quickly discover that a Limited Winery licensee must obtain an Amusement Permit in order to provide the type of entertainment they did.

² Liquor Code Section 516 is silent on the procedure related to extending and accepting an offer in compromise. Therefore, I see no bar to entertaining and accepting an offer in compromise, by telephone.

When imposing a fine against an Article IV licensee, Liquor Code Section 471 [47 P.S. §4-471] commands that the fine be paid within twenty (20) days. If a licensee fails to comply, Liquor Code Section 471 further provides for the consequence of license suspension or revocation. In contrast, Article V has no parallel provision.

Therefore, I impose the following conditions as integral to accepting Licensee's offer in compromise. Licensee must remit the \$350.00 within twenty (20) days of the mailing date of this Adjudication, which requirement will be strictly enforced. A failure to comply voids the agreement. In that event, I will issue a further Order reinstating the suspension.

ORDER:

In Re Citation No.: 12-1534; Licensee, Armstrong Valley Vineyard & Winery, LLC;
PLCB LID No.: 63840; PLCB License No.: LK-304

Imposition of Suspension

I impose a seven days suspension.

Accepting an Offer in Compromise

I accept Licensee's offer in compromise of \$350.00 which must be remitted within twenty (20) days of this Adjudication's mailing date. If Licensee fails to comply, the agreement will be void and the suspension will be reinstated.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 11TH day of December, 2012.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Detach Here and Return Stub with Payment

The offer in compromise 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

Armstrong Valley Vineyard & Winery, LLC
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