

Mailing Date: MAR 18 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 15-1101
LIQUOR CONTROL ENFORCEMENT	:	BLCE INCIDENT NO. W03-491484
	:	
v.	:	
	:	PLCB LID - 55931
VITA, INC.	:	
T/A PIZZA TOWN	:	PLCB LICENSE NO. R-AP-SS-19016
50 VETERANS DR.	:	
ELIZABETHTOWN, PA 17022	:	
	:	
LANCASTER COUNTY	:	

ADJUDICATION

BEFORE: DANIEL T. FLAHERTY, JR., ALJ
BUREAU COUNSEL: JOHN H. PIETRZAK
LICENSEE COUNSEL: JEFFREY S. SHANK

BACKGROUND:

This proceeding arises out of a citation that was issued on June 25, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against VITA, INC., (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 25, 2015, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside and/or 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 beyond the licensee's property line.

The investigation which gave rise to the citation began on February 9, 2015 and was completed on May 16, 2015; and notice of the violation was sent to Licensee by Certified Mail on June 5, 2015. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 15, 2015 at 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 25, 2015, an officer of the Bureau arrived in the vicinity of the licensed premises at 10:43 p.m. The officer parked her vehicle at the very end of the parking lot for the licensed premises which was closest to Hershey Road (N.T. 17-18). The officer walked around the perimeter of the parking lot for the licensed premises without hearing any music (N.T. 18).

2. While the officer was standing at a point off the licensed premises at the intersection of Old Hershey Road and Veterans Drive, the officer could hear music emanating from the deck area of the licensed premises (N.T. 19, 22-23).

3. The officer walked closer to the licensed premises and found that the music was getting louder, and she determined it was coming from the patio area of the premises (N.T. 19).

4. When the officer arrived at the patio area of the licensed premises, she observed a small speaker located on a little table next to the door. The music was coming from this speaker (N.T. 19).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since April 21, 2006, and has had two prior violations:

IN RE:

Citation No. 07-2075C. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a minor.

Citation No. 08-2155C. Fine \$1,250.00 and RAMP compliance mandated.

1. Sales to a minor.

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 VITA, INC., 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 7TH day of March, 2016.



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 Return Stub with Payment – Note Citation Number on Check

The fine must be paid by cashier's check, money order or a check drawn on the account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation to:

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