

Mailing Date: APR 14 2011

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0358
LIQUOR CONTROL ENFORCEMENT	:	
	:	
	:	
v.	:	Incident No. W01-398856
	:	
	:	
461 NORTH LLC	:	
T/A BUCKHEAD SALON	:	LID - 60393
457-461 N. 3 <sup>RD</sup> ST.	:	
PHILADELPHIA PA 19123	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-900	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EDWARD B. McHUGH, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

461 North, LLC t/a  
Buckhead Salon  
Citation No. 10-0358

This proceeding arises out of a citation that was issued on March 9, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 461 North, LLC, t/a Buckhead Salon, License Number R-AP-SS-EHF-900 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, September 15, 2010, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

There was a stipulation with regard to the mailing of the documents, but there was an objectionable argument with regard to the length of the investigation and the timeliness.

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 September 18, 2009, 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 and Sections 0903, 2701, 2702 and 2705 of the Crimes Code, 18 Pa. C.S. §§0903, 2701, 2702 and 2705, in that on June 21, 2009, Licensee, by its servants, agents or employes, committed simple assault, aggravated assault, criminal conspiracy and recklessly endangered another person.

#### COUNT NOS. 1 AND 2

#### FINDINGS OF FACT:

1. On August 12, 2009, an officer from the Bureau of Enforcement conducted an investigation of the licensed premises based upon a complaint from the Sixth District Philadelphia Police alleging disorderly operations and sales to minors at the premises. Along with the complaint was a 48 Incident Report which was taken at the scene by Philadelphia officers (N.T. 6-8).

2. The Bureau officer conducted an investigation from August 12, 2009 to February 3, 2010. During the course of this investigation, he made about a half a dozen visits to the licensed premises. The initial investigation involved an altercation with a patron and an employee of the licensed premises, which resulted in a fight and the patron being injured (N.T. 9).

3. During the course of the officer's investigation, he investigated the premises for sales to minors and other Liquor Code violations. He went to the premises on a few different occasions and met with the manager. He spoke to the manager on the phone. He compiled documents and attempted to acquire employee records (N.T. 10).

4. On August 22, 2009, two officers from the Bureau visited the premises along with the Philadelphia Police Department and Philadelphia Licenses and Inspections. There were no violations found on that date (N.T. 13).

5. On September 1, 2009, the officer summarized the 48's that were received from the Philadelphia Police Department based on the initial complaint. There were a number of complaints with regard to stolen items, e.g. cell phones, but nothing which resulted in a violation other than an assault by an employee of the premises on a patron on June 21, 2009 (N.T. 14).

6. On September 1, 2009, the officer also contacted the Sergeant from the Philadelphia Police Department. The officer visited the premises on Friday, September 18, 2009 along with another officer from the Bureau. When they arrived at the premises in their state vehicle, they parked the car on Third Street and approached the premises. The officers saw a doorman to the right standing in front of the premises at a ramp entrance. The officer was able to identify the doormen in that they had shirts on with labels. The officer entered the premises after paying a cover charge. The premises was open and operating and there were patrons inside. The officer noted that there was a disc jockey who was playing some form of hip hop rap music. The officers remained on the premises for one hour (N.T. 16-17).

7. The officer noted that there was a disc jockey in the middle of the bar area. He had what appeared to be a laptop with songs stored on it. The disc jockey hooked up speakers to the laptop. There were a number of speakers on the premises. Some of the speakers were suspended from the wall, some were at the entrance door. The officer noted that there was a parking lot right across the street. The speakers were facing the parking lot. The officer did not hear any music when they entered the premises. The music began approximately twenty minutes after the officers entered the premises (N.T. 17-18).

8. While inside the premises, the Bureau officer purchased an alcoholic beverage. The officer departed the premises at approximately 1:15 a.m. He paced off approximately eighty feet heading towards Springarden Street and heard music at a distance of up to approximately eighty feet. The music that the officer heard inside the premises was the same that he had heard outside the premises (N.T. 18-20).

9. On Sunday, October 18, 2009 at approximately 12:30 a.m., the investigating officer went to the premises with another officer. The premises was open and operating. The two officers paid a cover charge to enter, but observed no violations (N.T. 20).

10. In November of 2009, at the investigating officers directive, another officer from the Bureau of Enforcement visited the premises on November 5, 2009. The officer was there to investigate both the assault, loudspeaker violation and a complaint for minors. No violations were reported (N.T. 21).

11. On November 18, 2009, the investigating officer and another officer went to the licensed premises and conducted a routine inspection and spoke to the manager about the allegations received. At that time, they intended to conduct a routine inspection and speak to the manager about the alleged violations received, however, the premises was closed (N.T. 22).

12. On Wednesday, December 9, 2009, the officer again went to the licensed premises with the intent of doing a routine inspection and talking to the manager about the allegations, but the premises was closed. The sign on the window indicated that the premises was open Wednesday through Saturday (N.T. 22).

13. On December 17, 2009, two other officers from the Bureau of Enforcement went to the licensed premises on a Thursday night. The premises was open and operating. The officer spoke with Trevor Day, who is reported to have been the interim manager. A routine inspection was conducted of the premises (N.T. 22-23 and 232).

14. On December 22, 2009, the investigating officer contacted Mr. Day and spoke with him by telephone. Mr. Day purported to be the manager of the licensed premises. He had given the officers one of his cards during their visit of December 17, 2009 (N.T. 23-24).

15. The officer spoke with Mr. Day about the violations he had observed and spoke with him about the alleged assault. He informed the officer that the bouncer who was allegedly involved in the assault was no longer employed there. Mr. Day indicated that at the time of the assault, June 21, 2009, he was not employed as a manager. At that time, Kyle Lucas was the manager (N.T. 24).

16. In January of 2010, the investigating officer contacted the Philadelphia Police Department to get a copy of the arrest report for the bouncer who was allegedly involved in the assault (N.T. 24-26).

17. The officer was not able to obtain an arrest report on January 19, 2010, but made a call to a detective on February 1, 2010 and the report was faxed to him on February 2, 2010 (N.T. 27).

18. The officer then summarized the report (N.T. 27-28).

19. The person who was arrested was named Akeim Leonard. After the officer received the Affidavit of Probable Cause from the detective, he again visited the premises on Wednesday, February 3, 2010, along with his supervisor. The officers met with Trevor Day, the manager (N.T. 29).

20. The officers made an inquiry with regard to Akeim Leonard. Mr. Day supplied employee payroll records of the licensed premises, that indicated Mr. Leonard was working when the incident occurred (N.T. 30).

21. The employee report covered the period June 15, 2009 to June 21, 2009. It was computer generated. The officer indicated it was a full and accurate representation of what was provided to him through the manager, Trevor Day. According to the records, Mr. Leonard started his shift at approximately 8:12 p.m. on Saturday, June 20, 2010 and that he concluded his shift at approximately 2:52 a.m. on Sunday, June 21, 2010 (N.T. 32-35 and Exhibit B-3).

22. In February he also contacted Matthew, who was the witness and victim (N.T. 31).

23. The officer closed this investigation on February 3, 2010. Based on the findings of his investigation, he caused the notice of violation and citation to be issued (N.T. 39).

24. Katelyn is employed as a nanny caring for children. On June 21, 2009, she went to the licensed premises as a part of a birthday celebration event in a limousine that took her to the licensed premises. Matthew was with her as was Jessica, Nicole and Shane, a limousine driver. Another friend, Heather, accompanied them and also Lauren, Matthew's girlfriend, who was celebrating her birthday (N.T. 66-68).

25. The limousine took them from New Jersey to the licensed premises. They had drinks while on the premises. When Katelyn entered the premises, she remembers a ramp going up to the door and steps next to it. She remembered seeing club personnel checking identification cards and collecting cover charges (N.T. 69-70).

26. The limousine was parked approximately two car lengths from the licensed premises. Katelyn, Jessica and Heather were sitting in the limousine when they heard Lauren screaming. They got out of the limousine to see what was going on and to check on Lauren (N.T. 71-72).

27. Katelyn saw a bunch a people, but did not know what was going on. She then saw Matthew, who she referred to as Matt. She and Heather attempted to talk to Matthew and try to get him to come back into the limousine. A few minutes later, Matthew ran up the ramp to the door. They ran behind him. Someone threw a punch but they did not know who threw the first punch.

They saw Matthew being punched in the face. She could not identify the man who was punching Matthew. She indicated he was a male and that he was larger than Matthew (N.T. 7274).

28. Katelyn attempted to pull the individual off of Matthew. She tried pulling at his arm and yelling for him to stop. Then she saw Matthew go over the railing (N.T. 74-75).

29. When Matthew went over the railing onto the cement, Katelyn recalls him being on the ground and covering his face (N.T. 75).

30. They decided to call 911, since they did not know the address, a passerby called for them. Matthew was taken to the hospital. They went to the hospital with Matthew and then went to the police station to be interviewed. The detective did not interview Katelyn on that night, but did interview Jessica (N.T. 77).

31. Katelyn consumed beer while she was in the premises and in the limousine on the way over to the premises (N.T. 77).

32. Jessica attended a birthday celebration on June 20, 2009 into the early morning hours of June 21, 2009 at the licensed premises. She was accompanied by Katelyn, Nicole, Matthew and Lauren. They met at Lauren's house in New Jersey and took a limousine to Philadelphia arriving at the licensed premises sometime before midnight on June 20, 2009. The group entered together. She recalls being requested to show identification. She also recalls that there was a bouncer at the door (N.T. 81-84).

33. Jessica indicated that the group was inside, but that she was in and out of the premises over the course of the next two or three hours. She indicated that they did consume alcoholic beverages in the limousine on the way over and that she ordered a beer inside of the premises, but was outside of the premises most of the night. She indicated that there was no incident inside the premises of which she was aware. When they left the licensed premises, their intentions were to have the limo driver take them to get cheese steaks on the way home. However, two of the females had to return to the premises to go to the bathroom. Those two individuals were Heather and Lauren. Jessica indicated that Lauren was Matthew's girlfriend (N.T. 84-85).

34. Jessica indicated that she was already outside of the premises when the remainder of the group left the premises (N.T. 85).

35. She noted that Matthew left the bar and when the two females walked back inside, he also attempted to walk back inside with them. She assumed that he either went to use the bathroom also or that he was just making sure that they came back (N.T. 85-86).

36. Jessica was attempting to round up the remaining members of the group (N.T. 86).
37. As she walked up to the limousine, she noted that he was upset and that his glasses had been broken. Jessica saw him walk back to the front door. She saw that there was some pushing back and forth with the bouncer (N.T. 86-87).
38. Jessica does not know who threw the first punch because there was a grueling crowd but she noted that the fight did begin by the two of them pushing and shoving. She indicated that Nicole, one of the members of the group, ended up getting knocked down and Jessica picked her up and took her back to the limousine to make certain that she was okay (N.T. 87-88).
39. Jessica found Nicole in a fetal position on the ground (N.T. 89).
40. Nicole was on the ground, however, Matthew was on the ramp portion of the premises (N.T. 92-93).
41. After taking Nicole back to the limousine, Jessica continued attempts to gather up her group. When Jessica walked back, Matthew was still on the platform. It was difficult to get through the crowd because there was a large group of people (N.T. 93-94).
42. Jessica looked away and when she looked back, Matthew's body was coming over the railing. She put her hand under his head so that it would not hit the concrete (N.T. 95).
43. Jessica was interviewed by the police outside the club. She identified Akeim Leonard, at the scene, as the culprit and identified him a second time in a police photo (N.T. 96-98).
44. Joanne Wojnicki is a detective at the Philadelphia Police Department and at the time of hearing had been a detective for twenty-two and a half years. She conducted an investigation based on statements received from the Philadelphia Police officers and various witnesses. At the investigation, she caused an Affidavit of Probable Cause to be issued and an arrest made of Akeim Leonard for simple assault, aggravated assault, criminal conspiracy and reckless endangerment on June 20 and 21, 2009 (N.T. 101-103).
45. From the statement of Jessica, the officer agreed that there was a second man involved in the attack. She was not able to identify the second man (N.T.108).
46. Matthew visited the licensed premises on June 20, 2009 into the early morning hours of June 21, 2009. He had been there on a prior occasion as a patron. For his girlfriend's birthday, he had arranged to have a limousine take her and a group of friend's from New Jersey to

the licensed establishment. The group met at Lauren's house at around 4:00 or 5:00 p.m. in the afternoon. The limousine was pre-arranged to pick them up approximately 7:00 p.m., but in actuality he picked them up at approximately 8:00 p.m. While they were waiting for the limousine, they had drinks. Matthew indicated he had no alcoholic beverages during the limousine ride because he was giving directions to the bar and he was seated up front with the driver. He indicated there were approximately six passengers in the rear portion of the limousine (N.T. 114-115).

47. The limousine driver dropped off the group, which included two men and five females, in front of the bar. When they arrived, they walked up two steps and into the exit. Down the walkway there is a main entrance with a concrete ramp surrounded by a rail (N.T. 116-117).

48. There was a bouncer stationed at the exit. He recalls that he was wearing a black shirt. Matthew described the bar as being very large inside. Beyond the first bar there is another bar perpendicular to that one and a mechanical bull in the back of the premises (N.T. 118-119).

49. Matthew recalls going back to the middle of the bar where he stood while others sat down. He ordered a Miller Lite beer and stayed in that area for approximately forty-five minutes. The group then headed towards the entrance to the main bar. At the main bar, Matthew ordered shots for all of his friends and another Miller Lite beer for himself (N.T. 120).

50. The liquor was paid for in cash. He did not run a tab, but paid as he received the drinks. Matthew indicated that they were at the licensed premises for approximately two hours. Matthew indicated there was no disturbance during the time of his visit to the premises (N.T. 121-122).

51. Some of the members of the party were outside smoking cigarettes and some members were still indoors. Matthew left the bar with Lauren and Heather walking down the ramp and talking to one another. They were outside for two or three minutes when Heather and Lauren decided to go back to use the restroom. Matthew also decided to go back into the premises to use the restroom. Lauren and Heather reentered the premises using the exit (N.T. 122).

52. The young ladies were stopped by the doorman because when they entered, they did not receive a stamp or bracelet. The doorman was looking for that stamp or bracelet (N.T. 124).

53. Matthew was stopped as were other people by an individual wearing a plaid shirt. He was not wearing the black shirt that most of the bouncers appeared to be wearing (N.T. 125).

54. Matthew was told that he could not enter the premises. Matthew explained that he was just running in to use the restroom and that he had been there for a birthday party and that he would be coming right out. Matthew invited the bouncer to come with him and the two began to argue. The individual pushed Matthew back and his glasses flew off of his head. The glasses landed on the sidewalk in the street and were broken. Matthew could not find the entire frame (N.T. 126).

55. Matthew was angry and asked to speak to a manager. He then went to the entrance to see if he could talk to a manager. The entrance was up the ramp and had an adjacent railing (N.T. 126-131 and Exhibit B-6).

56. Matthew encountered two bouncers at the entrance. He told them that he wanted to speak to the manager and he tried to make his way into the bar. Just inside the door, the bouncers grabbed his arm. He informed them that one of the bouncers had broken his glasses and that he wanted to speak to the manager. One of the bouncers was Akeim Leonard. After continuing to try to walk in to find a manager, Mr. Leonard grabbed his arm and pushed him back telling him that he was not allowed to go in. Mr. Leonard grabbed him and pushed him back through the door and towards the railing (N.T. 132-134).

57. The bouncer continued to push Matthew back towards the railing. When Mr. Akeim Leonard began punching him, he tried to protect his face. He recalls the other man holding his arms back so that he could not defend himself. He is not sure how many times he was struck (N.T. 134-135).

58. Eventually, Matthew reached the railing and was leaning back over the railing still trying to protect his face from being punched. It was at that time that he was lifted by his legs and flipped over the railing. He landed on the pavement side of the railing. Matthew's head was near the curb and he was close to the street. He indicated that the railing is approximately ten to fifteen feet from the street (N.T. 136-138).

59. Matthew stated that Nicole was attempting to break up the fight, but she was pushed back and down to the sidewalk (N.T. 136).

60. A bouncer continued to punch Matthew after he went over the railing. He did recall the employee who originally hit him come around to the other side of the railing (N.T. 136-138).

61. Matthew indicates that he was not conscious at one point but does recall that a woman who was not a part of his group woke him and asked him if he was alright (N.T. 137).

62. Matthew recalls that the police came to the premises, as did paramedics who took him to Jefferson hospital emergency room for treatment (N.T. 138-139).

63. Matthew was treated for trauma. His injuries included a shattered eye socket and bleeding in the eyes and ears. He also had a cut on his lip (N.T. 139-143 and Exhibit B-7).

64. Matthew indicated that he has had one surgery on his eye, but needs a second surgery. Mr. Leonard was arrested pursuant to this incident (N.T. 145).

65. Mathew denies that there was any incident of any kind inside the premises regarding his behavior (N.T. 152-153).

66. The man in the plaid shirt permitted Lauren and Heather to proceed into the premises (N.T. 155).

67. At one point, Mr. Leonard said that he would get the manager. He walked into the premises approximately five feet, looked behind and said the manager the busy (N.T. 165).

68. Matthew indicated that the argument was started because the door person, that is to say the person wearing the plaid shirt, was requesting a cover charge at the door (N.T. 166).

69. Nicole stated that she visited the licensed premises on June 21, 2009 as a part of a birthday celebration for Matthew's girlfriend. She confirmed that the party began in New Jersey at Lauren's house. They eventually came to the licensed premises by way of a limousine. They consumed alcoholic beverages on the way in the limousine (N.T. 170).

70. Nicole remembered that they arrived by limousine sometime before midnight. She recalls being asked for identification, and she entered going up the walkway ramp, but does not recall whether or not she paid a cover charge (N.T. 171).

71. She was not certain as to what the security guards were wearing, but thought that they might be wearing black (N.T. 172).

72. There were seven people in Nicole's group. They were drinking throughout the night. She was not certain as to how much they actually drank. She recalled that she was not "to the point of not knowing what she was doing" (N.T. 172).

73. They left the premises and intended to go and get something to eat. They left the premises somewhat separately, some being still inside and some outside. She only recalled one door and did not remember a second door to the premises (N.T. 173).

74. Nicole was in the limousine when Matthew went back to the restroom. She saw him go towards the bar, but was not clear whether he entered the bar. She observed Matthew trying to find his broken glasses. Matthew was very upset (N.T. 174).

75. At some point, she saw Matthew trying to get back inside and that is when the pushing and shoving started. There were so many people surrounding the area that she really could

not see what was happening. She recalls Matthew running to try to get up the rail and that the bouncers threw him over the side. Nicole tried to intervene (N.T. 175).

76. Nicole attempted to get in between the bouncers and Matthew to stop the bouncers from punching him. She thought that because she was a female that they would stop. Instead, they threw her to the ground (N.T. 175-177).

77. At this point, Jessica took her to the limousine and sat in the limousine with her (N.T. 177).

78. Nicole was crying and remained in the limousine for a short time but then left the limousine and walked back. She saw Matthew sitting on the curb and his girlfriend sitting next to him. They were covered in blood (N.T. 178-179).

79. Nicole did go to the hospital and sat in the waiting room. She also went to the police station and spoke with a detective (N.T. 179).

80. Akeim Leonard was employed as a security person on June 21, 2009 at the licensed premises. He had been employed for about a year. He has been employed at a variety of different clubs and bars. He trained with a company called AFI Security. He is trained to handle physical altercations. He understood that his job duty was keeping the peace (N.T. 186-187).

81. On June 21, 2009 at approximately 5:00 or 6:00 p.m., he was one of the security persons on duty. When the evening started, he was stationed at the top of the stage (N.T. 188).

82. From the stage, he has a good view of everything including the front door (N.T. 189).

83. Mr. Leonard indicated that Matthew was intoxicated on that evening. He indicated that he could tell from the look in his eyes and from his movement and his speech (N.T. 190).

84. Mr. Leonard left the stage area and came to the entrance of the premises at approximately 1:45 to 1:50 a.m. because of a pushing altercation at the exit door (N.T. 190).

85. Matthew was trying to walk into the exit door and was blocked. Mr. Leonard refused him entry, pushed him and shoved him back away from the door (N.T. 191-192).

86. When Mr. Leonard closed the exit door, Matthew started banging on the windows. Matthew then came to the entrance where there was a ramp and Mr. Leonard also went to that door (N.T. 192-193).

87. Mr. Leonard indicated that after 1:30 a.m., they were not allowing anyone to enter through this door (N.T. 193).

88. Mr. Leonard was responsible for Matthew going over the rail (N.T. 195-196).

89. Charges against Mr. Leonard were dismissed for failure to prosecute (N.T. 201).

90. Mr. Leonard saw Matthew being punched by two individuals (N.T. 204).

91. Mr. Leonard signed a document which stated that he was not to use violence in the course of his employment or conduct on the premises. At that time, there was no specific head of security (N.T. 208).

92. In an altercation where someone is directed to leave, the manager should be advised (N.T. 210).

93. There is no indication that in this case the manager was advised (N.T. 210).

94. Mr. Leonard indicated that he went to the door because he saw the pushing altercation but did not indicate that he advised the manager (N.T. 211).

95. Mr. Leonard did not know the manager, Mr. Cox's, location at the time (N.T. 211-213).

96. Security is all dressed the same way (N.T. 213).

97. Mr. Cox did not direct that Matthew be escorted out of the premises (N.T. 214).

98. Mr. Leonard did not remember Matthew being earlier escorted out of the premises (N.T. 220).

99. Kevin Marcuse is the regional manager of seven restaurants, one of which is this licensed premises. He oversees sales goals, profitability, issues and questions with regard to local management. He usually visits the premises one or two times a month. Mr. Marcuse indicated that Brian Wehrman is the current manager of the premises. He has been the general manager for approximately six months. On June 25, 2009, Andrew Cox was the manager (N.T. 230-232).

100.Mr. Marcuse indicated that bar people must take an OJT test, which they go over in great detail as a condition of their employment. They do goodwill planning and describe these persons as goodwill ambassadors. The goodwill ambassador is described as someone who runs events of the corporation by checking identifications, greeting people, stationing themselves throughout the business, picking up bottles and glassware, being a host on the floor and communicating with patrons. They are considered a part of the security team (N.T. 232-233 and Exhibit L-2).

101.The premises also has an employee handbook. It outlines the responsibilities of the goodwill ambassador/security person (N.T. 233-234 and Exhibit L-3).

102.The policy sets forth a dress code, a policy for identification requests and indicates that there is to be no violence of any kind. The rules are focused on communicating with the patron, and if there is an altercation, to bring in a manager and if a person must be escorted out of the premises to defensively use his hands (N.T. 234-235).

103.The written policy of the licensed premises indicates that there is never to be choking, punching or any offensive assault (N.T. 235 and Exhibit L-3).

104.Mr. Cox, a manager at the time, advised the regional office of the incident on the premises shortly after it occurred (N.T. 235-236).

105.Mr. Marcuse, the regional manager, was advised that Mr. Cox was inside the premises, did not come outside the premises until the police and ambulance arrived, and did not witness the event (N.T. 236-237).

106.The premises also has a “No Strike Agreement,” which indicates that employees would be terminated for striking a patron. The policy also indicates that the premises is a drug free work zone. All employees are given copies of that information (N.T. 237-238 and Exhibit L4).

107.All employees are required to sign a copy of the “No Strike Agreement” (N.T. 238).

108.While Mr. Cox was the manager, the responsibilities of the doormen were constantly reinforced (N.T. 242).

109.As manager, Mr. Cox’s responsibility would also have been to open the store, hire and terminate employees, coordinate marketing data, make purchases of liquor, beer, wine, coordinate local events, work with charities and reach out to the community. The manager is also in charge of scheduling (N.T. 239-240).

461 North, LLC t/a  
Buckhead Salon  
Citation No. 10-0358

110. On September 18, 2009, the Bureau alleges that the sound of music could be heard outside the licensed premises and that that noise was generated through loudspeakers. Mr. Marcuse indicated that a number of the speakers were there from a previous business and are not functioning. He indicates that on no occasion has he ever authorized the use of outside speakers (N.T. 241).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

Count No. 1 - On September 18, 2009, 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, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a).

Count No. 2 - There is insufficient evidence to conclude that on June 21, 2009, Licensee, by its servants, agents or employes, committed simple assault, aggravated assault, criminal conspiracy and recklessly endangered another person, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471 and Sections 0903, 2701, 2702 and 2705 of the Crimes Code, 18 Pa. C.S. §§0903, 2701, 2702 and 2705.

PRIOR RECORD:

Licensee has been licensed since December 16, 2008, and has a record of prior violations as follows:

Citation No. 09-0988X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages. March 4, 2009.

Citation No. 09-2470X. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages. August 11, 2009

DISCUSSION:

461 North, LLC t/a  
Buckhead Salon  
Citation No. 10-0358

### Notice of Violation

Licensee objects to the timeliness of the Notice of Violation. Section 471 of the Liquor Code, 47 P.S. §4-471(b) in pertinent part states:

No penalty provided by this section shall be imposed for any violations provided for in this act unless the bureau notifies the licensee of its nature within thirty days of the completion of the investigation.

Licensee complains of the length of the investigation, i.e., Licensee alleges that the investigation closed or should have closed prior to the date claimed by the Bureau, and argues that the notice is therefore untimely.

According to the Notice of Violation letter, with a mailing date of February 18, 2010, this investigation was assigned on August 12, 2009 and concluded on February 3, 2010. The notice advised the Licensee of investigative activity, which resulted in Citation No. 10-0358. The activity involved an alleged assault at the premises on June 21, 2009 and loudspeaker violation on September 18, 2009. The investigation began because of a number of police reports, which included an alleged assault at the premises on June 21, 2009. Additionally, there was a complaint regarding sales to minors at the licensed premises.

An officer from the Bureau indicated sporadic, but on-going activity over the almost six month period from August of 2009 until February of 2010. The activity included half a dozen visits to the premises. Some of the visits were undercover; however, the visits included an open inspection and meetings with the manager. The initial visit to the premises on August 22, 2009, included a detail of officers, which included Philadelphia police and the Department of Licensing and Inspections. No violations resulted from that visit to the premises. In September of 2009, the officer indicated that he summarized reports from the Philadelphia Police Department and contacted the initial complainant, i.e. a Philadelphia Police sergeant.

During September, the Bureau made an undercover visit to the premises, which resulted in a citation for loudspeaker violations. An officer from the Bureau made another undercover visit to the premises in October of 2009. No violations were found.

On Wednesday, November 18, 2009 the officers went to the premises to conduct a routine inspection, however the premises was closed. A sign in the window indicated that the premises was open from Wednesday through Saturday. The officers also went to the premises on Wednesday, December 9, 2009 and found the premises closed.

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On Thursday, December 17, 2009, officers from the Bureau went to the licensed premises and conducted a routine inspection. No violations were found. On December 22, 2009 the investigating officer spoke with the interim manager, Mr. Day. Mr. Day advised the officer that he was not the manager at the time of the alleged assault. He was not certain, but thought that he recalled that a Kyle Lucas was the manager at the time. Akeim Leonard, the bouncer who allegedly assaulted a patron of the licensed premises, referred to a Mr. Cox as the manager during the time of the incident.

In January of 2010, the officer contacted the Philadelphia police to obtain the arrest record of Akeim Leonard. The report was received on February 1, 2011. The officer reviewed the report and spoke with his supervisor concerning the report. On February 3, 2010, the officer and his supervisor met with Mr. Trevor Day, the current manager, regarding the violations which had been observed and the alleged assault. Mr. Day provided the officers with employee records concerning Mr. Leonard. According to Licensee's records, Mr. Leonard began his shift at 8:12 p.m. on June 20, 2009 and ended it at 2:52 a.m. on June 21, 2009. The officer also spoke with the alleged victim of the assault whose information was obtained from the arrest report.

The narrative of the Bureau's activities indicates sparse, yet continuous activity regarding the investigation of this premises. Licensee was keenly aware of the assault incident at its premises in that it generated police activity. The only other charge was loudspeakers in September of 2010. There were no subsequent charges that might have been avoided by Licensee's earlier knowledge of the ongoing investigation. Licensee was advised of the findings even before the Notice of Violation letter. The Notice of Violation letter was properly addressed and sent by certified mail on February 18, 2010, within thirty days of the close of the investigation. The Bureau's prolonged investigation did not deny Licensee an adequate opportunity to prepare a defense. *See Pennsylvania State Police v. McCabe*, 644 A.2d 1270 (Pa.Cmwlth. 1993) .

#### Substantial Evidence

Count No. 1 of the Citation charges Licensee with loudspeaker violations on September 18, 2009. Two officers from the Bureau went to the licensed premises at approximately 12:10 a.m. There were approximately 80 patrons on the premises. At about 12:30 a.m., a DJ began to play loud music through a number of speakers on the premises. The officers exited the premises at 1:15 a.m. and could still hear the sound of music, coming from the licensed premises, at a distance up to 80 feet from the premises. The evidence clearly established a violation.

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Relative to Count No. 2 of the Citation, Section 471 of the Liquor Code permits the Bureau to issue citations for “sufficient cause,” including violations of the Crimes Code which occur on licensed premises. *See Pa. Liquor Control Bd. v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988); and *also see Primo’s Bar, Inc. Liquor License Case*, 409 A.2d 90, 91 (Pa. Cmwlth. 1986). However, some element of scienter (guilty knowledge) on the part of the licensee must exist before liability can attach to the Licensee. As such it is necessary for the Bureau to establish that Licensee knew or should have known of the illegal activities by an employee or patron and that the Licensee failed to take substantial steps to prevent the illegal activity. *Pa. Liquor Control Bd. v. TLK, Inc.*

It is clear that Akeim Leonard and another bouncer assaulted the patron. The patron had been drinking, apparently to excess, but that should not have been an excuse for the bouncers to use excessive force and violence against him. The patron should have been permitted to take his complaint to the manager as he requested. When you sell alcoholic beverages, you are clearly aware that patrons may get drunk. That a patron may be intoxicated does not justify the use of physical violence against him or her. Mr. Akeim offered a ridiculous recitation of the facts, which included a tale of one African-American and an Asian-American male coming from across the street and beating up the patron. The second absurd statement was that Mr. Akeim placed the patron on the other side of the railing to get him out of harms way, when in fact he tossed him over the balcony in furtherance of his assault of the patron.

The Bureau cites *Alaska Waffle House*, Citation No. 03-1592, which was affirmed in an unpublished opinion on appeal to the Court of Common Pleas. The case also involved bouncers who assaulted a patron; however, the Court found that the regional manager had actual knowledge of the criminal acts of the employees and failed to take affirmative steps to stop an assault on a patron, which began inside the premises and continued outside. This is not to suggest that management is without liability or may absolve itself from liability by simply not hearing or seeing any evil. A manager’s responsibility involves attention to employees and to the patrons. Here, there is no evidence that tends to show actual or apparent knowledge on the part of the Licensee or a manager. In fact, the patron denies that there was any altercation inside or that he was earlier ejected from the premises. Therefore, in the instant case there is not substantial evidence to find that the Licensee knew or should have known of the illegal activity that occurred immediately outside the premises, albeit at the hands of Licensee’s employees. *Pa. Liquor Control Bd. v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988).

The altercation on the licensed premises on this date involving Mr. Akeim Leonard, a bouncer, and seemingly another unknown bouncer(s), was not connected to a consistent theme of operations or at least not one that was demonstrated to the Court. Licensee presented evidence of training and distribution of materials to its employee’s, which expresses disapproval of the use of physical force or violence. There is no evidence in the record that the events were consistent with prior or subsequent events of this nature related to the operation of this Licensee.

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Licensee claims to have terminated Mr. Leonard's employment shortly after this incident, which might be considered a "substantial, affirmative measure" to prevent further misconduct, however, Mr. Leonard's continued association and seemingly amicable relationship with Licensee calls that action into question. Still, the Bureau showed no pattern of disturbances in and around the licensed premises such that Licensee knew or reasonably should have known of the activity and failed to take any steps to prevent it. *Pa. Liquor Control Bd. v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988).

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$600.00.  
Count No. 2 - DISMISSED.

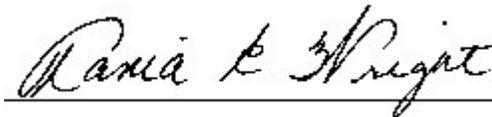
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 461 North, LLC, t/a Buckhead Salon, License Number R-AP-SS-EHF-900, pay a fine of Six Hundred Dollars (\$600.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 29<sup>TH</sup> day of MARCH, 2011.



Tania E. Wright, J.

**NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS**

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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.

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Detach Here and Return 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.** 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

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