

Mailing Date: DEC 12 2014

[Appeal](#)

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

|                                    |   |                                     |
|------------------------------------|---|-------------------------------------|
| PENNSYLVANIA STATE POLICE,         | : | In Re Citation No.: 13-0086         |
| BUREAU OF LIQUOR CONTROL           | : |                                     |
| ENFORCEMENT (BLCE)                 | : |                                     |
|                                    | : | BLCE Incident No.: W07-448534       |
| v.                                 | : |                                     |
|                                    | : |                                     |
| MARCEDA, LLC                       | : | PLCB LID No.: 53371                 |
| T/A EAST SIDE BAR & RESTAURANT 318 | : |                                     |
| W. DUBOIS AVE.                     | : |                                     |
| DUBOIS, PA 15801-2711              | : | PLCB License No.: R-AP-SS-EHF-11791 |
|                                    | : |                                     |
| CLEARFIELD COUNTY                  | : |                                     |

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Nadia L. Vargo, Esquire

FOR LICENSEE: Frank C. Sluzis, Esquire

**BACKGROUND:**

This proceeding arises out of a citation, containing three counts, that was issued on February 4, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Marceda, LLC (Licensee).

The first count 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 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 August 28, September 1, 6, 7, 21, October 20, 30, November 1, 2, 8, 9, 2012.

The second count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that Licensee, by your servants, agents, or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron, on September 13, 2012.

The third count charges Licensee with a violation of Section 13.102(a)(3) of the Liquor Control Board Regulations [40 Pa. Code §13.102(a)(3)]. The charge is that Licensee, by your servants, agents, or employees, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited draft beers were served for the set price of \$5.00, on July 5, 2012.

I presided at an evidentiary hearing on November 5, 2014 at 180 Charlotte Drive, Altoona, Pennsylvania.

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

**FINDINGS OF FACT:**

1. The Bureau began its investigation on July 5, 2012 and completed it on December 20, 2012. (N.T. 10)
2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on January 3, 2013. The notice alleged violations as charged in the citation. (Judge's Exhibit No. J-1, N.T. 40)

**Count No. 1**

3. A Bureau Enforcement Officer arrived in the area of the licensed premises at about 10:30 p.m., September 6, 2012. The Officer heard music emanating from the premises across the street. The music was provided by a DJ. One of the windows in the licensed premises was open. (N.T. 12-17)
4. The Officer returned to the area of the licensed premises on November 8, 2012, once again hearing amplified music escaping the premises across the street. (N.T. 17-21)

5. Two persons who live across the street from the licensed premises were disturbed in their home by amplified music emanating from the licensed premises. The amplified music generally began anywhere from 10:00 p.m. to 11:00 p.m. and ended at either 12:00 a.m., 1:00 a.m. or 2:00 a.m. the following morning. The disturbances occurred about three nights per week, generally on Tuesdays, Thursdays and Fridays. (N.T. 68-95)

6. One of the residents spoke to Licensee's President, Mr. Kepple, at some time during the course of these disturbances. Mr. Kepple responded by saying the music did not seem loud to him. The residents called the licensed premises to have the music turned down on some occasions but to no avail. (N.T. 95-97)

#### Count No. 2

7. On September 13, 2012, while seated in his vehicle in the licensed premise's parking lot, and at about 10:00 p.m., the Officer noticed a pick-up truck with four people in it parked in the lot. Three of the four entered the licensed premises. The fourth staggered around the truck. He fell against the truck and urinated in the parking lot. He was unsteady on his feet as he entered the licensed premises. The Officer dismounted his vehicle to follow the individual into the licensed premises. He observed in an undercover capacity. (N.T. 20-21)

8. After entering the premises, the Officer saw the targeted customer (TC) sitting at the bar counter with the three people earlier identified. The TC was drinking from a bottle of beer. His face was flushed and eyes dilated. (N.T. 23)

9. At about 10:30 p.m., one of the group ordered four shots of Jagermeister. He drank one and gave the remaining three to his companions, one of whom was the TC. (N.T. 2324)

10. He consumed the above service in about fifteen minutes after which the TC received a second service of Jagermeister in the same manner as the first. The TC consumed all of it. (N.T. 25-26)

11. The TC left his seat at the bar counter and walked to an ATM within the premises. He had difficulty inserting a card into the ATM. He also had difficulty entering correct numbers to access the ATM. He finally retrieved money with some difficulty. As he returned to the bar, he was unsteady; he stumbled against a chair. (N.T. 26-28)

12. When he returned to his barstool, he received a third service of Jagermeister, in the same manner as the prior two. This service occurred within an approximate thirty minutes time

span from when the Officer entered. The TC ordered a bottle of beer which the bartender served. The TC consumed the third Jagermeister. (N.T. 29-32)

13. After receiving the bottle of beer at about forty minutes after the Officer's entry, the TC received a forth service of Jagermeister which he refused. (N.T. 32-34)

Count No. 3

14. In response to an ad (Judge's Exhibit No. J-3) a Bureau Enforcement Officer entered the premises in an undercover capacity on July 5, 2012. The Officer went to the second floor of the licensed premises where he paid \$5.00 to enter after which he and others were permitted an indefinite quantity of beer. (N.T. 39-44)

**CONCLUSION(S) OF LAW:**

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. I sustain the violations as charged.

**DISCUSSION:**

Count No. 1

The neighbors were not clear on the exact dates they were disturbed by amplified music escaping the premises. However, their testimony was clear concerning a disturbance pattern. As the Officer identified two dates, I sustain the charge as to those two dates and on divers other occasions between August 8, 2012 and November 8, 2012.<sup>1</sup>

**PRIOR ADJUDICATION HISTORY:**

---

<sup>1</sup> Given the number of continuances (3) in this matter, it is understandable that memories would fade.

Licensee has been licensed since September 3, 2004, and has the following Adjudication history:

In Re Citation No.: 05-1939. Fine \$200.00.

Sold and/or served an unlimited or indefinite amount of alcoholic beverages on August 4, 2005.

In Re Citation No.: 07-1943. Fine \$300.00.

Used loudspeakers or devices whereby music could be heard outside on February 11 and April 6, 2007.

In Re Citation No.: 07-2787. Fine \$150.00.

Failed to appoint a full-time manager for the premises between February 28, 2006 and September 20, 2007.

In Re Citation No.: 08-1865. Fine \$350.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time on July 6, 2008.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. on July 6, 2008.

In Re Citation No.: 09-0208. Fine \$1,000.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time on November 9, 2008.
2. Used loudspeakers or devices whereby music could be heard outside on 12 dates between June 13 and December 26, 2008.
3. Insufficient illumination on November 9, 2008.

In Re Citation No.: 09-2052. Fine \$750.00.

Used loudspeakers or devices whereby the sound of music could be heard outside on 11 dates between January 3 and July 26, 2009.

In Re Citation No.: 11-0336. Fine \$1,000.00.

Used loudspeakers or devices whereby the sound of music could be heard outside on September 16, October 7, 12, 26, 2010, January 27 and 29, 2011.

In Re Citation No.: 12-1071. Fine \$1,000.00 and Amusement Permit suspended 28 days.

Used loudspeakers or devices whereby the sound of music could be heard beyond the licensee's property line on February 16, March 2, 15, 22, April 26 and May 18, 2012.

**PENALTY ASSESSMENT CRITERIA:**

***Mandatory Requirement(s)***

Count Nos. 1 and 3

Liquor Code Section 471 [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 the violations found herein.

Count No. 2

Liquor Code Section 471 [47 P.S. §4-471] prescribes a penalty of license suspension, or revocation, or a fine of not less than \$1,000.00, or more than \$5,000.00, or both for the violation found herein.

Further, Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to responsible alcohol management, mandates that Licensee participate in the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program (RAMP), since this is Licensee's first violation as herein found.

***Discretionary Component(s)***

Count No. 1

Licensee brazenly and purposefully engaged in a pattern of constant disturbances. As I promised in In Re Citation No.: 12-1071, I will impose a severe sanction.

Count No. 2

It is no surprise that a licensee who disregards its neighbors would also disregard the obligation to refrain from providing alcoholic beverages to anyone visibly intoxicated. Instantly, the TC arrived in a drunken condition. In less than one hour, he was served two bottles of beer and four glasses of Jagermeister, the last of which the TC refused. A severe sanction is warranted.

Count No. 3

Licensee turned the operation of its second floor over to others in what could have been a major disaster involving many drunks. This is exactly why the pertinent regulation was adopted. This charge, too, demands a stiff penalty.

I impose:

Count No. 1 - \$1,000.00 fine and a twenty-seven days Amusement Permit suspension which is to begin after the three days suspension ends.

Count No. 2 - \$2,500.00 fine.

Count No. 3 - \$1,000.00 fine and three days license suspension.

**ORDER:**

***Imposition of Fine***

Licensee must pay a \$4,500.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

***Suspension Length and Date(s)***

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the license, for three days, beginning Monday, January 19, 2015, 7:00 a.m., and ending Thursday, January 22, 2015, 7:00 a.m.

***Instructions to Post Notice of Suspension Placard***

Licensee shall post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Monday, January 19, 2015, 7:00 a.m. The Suspension Placard may not be removed until Thursday, January 22, 2015, 7:00 a.m.

***Consequence of Failing to Comply With This Order***

In addition to any other consequence at law, if Licensee does not comply with all conditions herein, the Bureau may issue an additional citation alleging Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

***Imposition of Amusement Permit Suspension***

I suspend the Amusement Permit for twenty-seven days, beginning Thursday, January 22, 2015, 7:00 a.m., and ending Wednesday, February 18, 2015, 7:00 a.m. Licensee must place the enclosed label over the Amusement Permit portion of the license prior to the suspension's effective date and time. Licensee must keep the label on the license as above described, for the entire thirty days suspension. Licensee may remove the label Wednesday, February 18, 2015, 7:00 a.m.

***Mandatory RAMP Compliance***

I order Licensee to comply with Liquor Code Section 471.1, pertaining to responsible alcohol management, for one year from the date of Bureau of Alcohol Education (BAE) certification.

***Requirement to Contact the BAE of the Pennsylvania Liquor Control Board***

Licensee must contact the BAE, Pennsylvania Liquor Control Board: toll free telephone No.: 1-866-275-8237; web site: [www.lcb.pa.gov](http://www.lcb.pa.gov); email address: [LBEducation@pa.gov](mailto:LBEducation@pa.gov) within thirty days of the mailing date of this Adjudication to effect full RAMP compliance. Licensee has ninety days from the mailing date of this Adjudication to be fully certified by the BAE.

***Consequence of Noncompliance with Mandatory RAMP***

Failure to comply may cause the Bureau to issue a citation alleging Licensee's noncompliance. Alternatively, the Bureau may request a modification of the penalty imposed in this Adjudication.

***Retaining Jurisdiction***

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 10<sup>TH</sup> day of December, 2014.



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. If you have not already done so, it may be prudent for you 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.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us). The full requirements for an appeal can be found in 47 P.S. §4-471.

**Detach Here and Return Stub with Payment – Note Citation Number on Check -----**

-----  
The fine must be paid by cashier's check, money order, or an attorney's check who is licensed to practice law 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

**Credit/debit cards may be used:** visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us) scroll over LEGAL and then click on Office of ALJ for instructions..