

Mailing Date: July 30, 2014

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 13-1478
ENFORCEMENT	:	
	:	
	:	
v.	:	
	:	
BARTLETT TRAYNOR &	:	License No. R-4643
LONDON, LLC	:	
t/a Harrisburg Midtown Arts Center	:	LID 61720
1110 North 3 rd Street	:	
Harrisburg, PA 17102-2018	:	

Counsel for Licensee (on appeal):	Frank C. Sluzis, Esquire 2000 Linglestown Road Suite 106 Harrisburg, PA 17110
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Counsel for Bureau:	John H. Pietrzak, Esquire Pennsylvania State Police, Bureau of Liquor Control Enforcement 3655 Vartan Way Harrisburg, PA 17110
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OPINION

Bartlett Traynor & London, LLC (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge (“ALJ”) Daniel T. Flaherty, Jr., mailed April 18, 2014, wherein the ALJ sustained Citation No. 13-1478 and fined Licensee four hundred dollars (\$400.00).

On July 25, 2013, the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) issued the Citation to Licensee, charging it with violating section 471 of the Liquor Code [47 P.S. § 4-471] and subsection 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. § 637.6(a)(2)] in that on December 2 and 29, 2012, Licensee, by its servants, agents, or employees, smoked and/or permitted smoking in a public place where smoking is prohibited.

A hearing was held on January 28, 2014, in which John H. Pietrzak, Esquire, appeared as counsel for the Bureau, and John Traynor, member of the licensed limited liability company, appeared on Licensee’s behalf. By Adjudication and Order mailed April 18, 2014, the ALJ sustained the charge and ordered Licensee to pay a fine of four hundred dollars (\$400.00). Licensee filed a timely appeal with the Board on May 2, 2014.¹

Pursuant to section 471 of the Liquor Code, the appeal in this case must be based solely on the record before the ALJ. The Board may only reverse the decision if the ALJ committed an error of law or abuse of discretion, or if his decision was not based upon substantial evidence. [47 P.S. § 4-471(b)]. The Commonwealth Court has defined “substantial evidence” to be such relevant

¹ The appeal acts as an automatic supersedeas. [47 P.S. § 4-471(b)].

evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 484 A.2d 413 (Pa. Cmwlth. 1984). Furthermore, the Pennsylvania Supreme Court has defined an abuse of discretion as “not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence or the record, discretion is abused.” Hainsey v. Pennsylvania Liquor Control Bd., 529 Pa. 286, 297, 602 A.2d 1300, 1305 (1992) (citations omitted).

On appeal, Licensee essentially restates the standard of review in alleging that the ALJ committed an error of law and that the ALJ's Findings of Fact are not supported by substantial evidence. Because Licensee did not provide any further explanation for the basis of its appeal, the Board has conducted a general administrative review of the certified record, including the ALJ's Adjudication and Order, Licensee's Appeal, and the Notes of Testimony and Exhibits from the hearing held on January 28, 2014. Based upon its review, the Board has concluded the ALJ did not commit an error of law in sustaining

the Citation, and further, the ALJ's Findings of Fact were supported by substantial evidence.

Section 637.6(a)(2) of the Clean Indoor Air Act provides that it is unlawful to “[p]ermit smoking in a public place where smoking is prohibited.” [35 P.S. § 637.6(a)(2)]. Here, Bureau Officer Richard Hackenberg testified that on December 2 and 29, 2012, he visited the licensed establishment in an undercover capacity and observed people smoking on the business premises. (N.T. 9-12). The officer’s testimony in conjunction with the attestation from the Pennsylvania Department of Health [Ex. C-4], indicating Licensee was not exempt from the smoking prohibition, clearly demonstrate that Licensee allowed smoking in a public place where smoking was prohibited by law on the dates charged. These violations of the Clean Indoor Air Act [35 P.S. § 637.6(a)(2)] constitute sufficient cause to find Licensee in violation of section 471 of the Liquor Code [47 P.S. § 4-471].

Given the plain language of the statute and the undisputed facts², there is no question that the decision of the ALJ was supported by substantial evidence and was not an error of law. Thus, for the foregoing reasons, the Adjudication and Order of the ALJ is affirmed.

² Mr. Traynor testified to some mitigating circumstances but admitted the violations as charged.

ORDER

The appeal of Licensee is denied.

The decision of the ALJ is affirmed.

The fine of four hundred dollars (\$400.00) has not been paid. Licensee is hereby ordered to pay the fine in the amount of four hundred dollars (\$400.00). Failure to pay the fine within twenty (20) days of the mailing date of this Order will result in license suspension and/or revocation.

This case is hereby remanded to the ALJ to ensure compliance with this Order.

Board Secretary