

Mailing Date: APR 22 2014

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 13-1516 LIQUOR
CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-456964
	:	
v.	:	
	:	
	:	PLCB LID - 61720
BARTLETT TRAYNOR & LONDON	:	
LLC	:	PLCB LICENSE NO. R-AP-SS-4643
T/A HARRISBURG MIDTOWN ARTS	:	
CENTER : 1110 N. 3 RD ST. :	:	
HARRISBURG, PA 17102-2018	:	

ADJUDICATION

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: JOHN TRAYNOR**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 1, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against BARTLETT TRAYNOR & LONDON, LLC, License Number R-AP-SS-4643 (hereinafter “Licensee”).

The citation contains three counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)] in that on February 13, 14, March 13, 24 and May 18, 2013, Licensee, by its servants, agents or employees, smoked and/or permitted smoking in a public place where smoking is prohibited.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] in that on February 15, 16, March 1, 3, 7, April 2, 5, 25, 27, 28 and May 18, 2013, the licensed establishment was operated in a noisy and/or disorderly manner.

The third count charges Licensee with violation of Section 493(34) of the Liquor Code [47 P.S. §4-493(34)] in that on February 15, 16, March 1, 3, 7, April 2, 5, 25, 27, 28 and May 18, 2013, Licensee, by its servants, agents or employees, 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 beyond the licensee's property line.

The investigation which gave rise to the citation began on February 7, 2013 and was completed on May 28, 2013; and notice of the violation was sent to Licensee by Certified Mail on June 12, 2013. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 28, 2014 in 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:

COUNTS 1, 2 AND 3

1. On February 13, 2013, two officers of the Bureau entered the licensed premises at 10:19 p.m. (N.T. 8).
2. Upon entry the officers saw approximately 10 patrons smoking in an area past the stage area (N.T. 9).
3. On March 13, 2013 one of the aforementioned officers made an undercover visit inside the licensed premises, arriving at 11:33 p.m. (N.T. 10).
4. Upon entry, the officer observed patrons smoking on the licensed premises (N.T. 10).
5. On March 24, 2013 the officer arrived at the licensed premises at 1:15 a.m. The officer entered the licensed premises and sat at the bar counter. At 1:30 a.m. an announcement was made concerning last call indicating that no more alcohol would be served. At 2:00 a.m., the bartender walked around and told everybody they had to be out of the building by

- 2:30 a.m. At this point ashtrays were brought out and employees started to smoke (N.T. 11-12).
6. On April 25, 2013 an officer arrived at the licensed premises at 10:20 p.m. He found that a band playing on the premises that night was on break. When the band finished its break and started to play, he departed the premises at 10:45 p.m. and went outside. The music performed by the band was amplified. The officer found that the amplified music provided by the band was audible beyond the property lines of Licensee's premises at distances up to 216 feet (N.T. 15-17).
 7. During the period from February 7, 2013 through May 20, 2013, Licensee did not have an exception from the Pennsylvania Department of Health permitting smoking on the licensed premises (N.T. Exhibit C-3).
 8. On April 27, 2013, a supervising officer for the Bureau, pursuant to a complaint, arrived at the licensed premises at 11:50 p.m. He parked his vehicle in a lot near the licensed premises. Immediately upon exiting the vehicle he was able to hear the sound of music, bass and percussion coming from the licensed premises. This lot was approximately 30 feet from the licensed premises (N.T. 21-22).
 9. The officer conducted a sound check and walked approximately 75 feet west on Herr Street, past the residence of a complainant to the address of 262 Herr Street, at which point he could still hear the music coming from the licensed premises. He then walked south across Herr Street and headed back towards the premises at which point he could still hear music coming from the premises. He then turned and went south on Susquehanna Street approximately 90 feet at which time he could again still hear the music. He came back to Herr Street, stayed on the opposite side of Herr Street from the licensed premises and walked north towards Third Street. He got to the corner of Third and Herr Streets and could still hear the basic percussion reverberations coming from the licensed premises (N.T. 22-23). The officer then entered the licensed premises. The time had now passed midnight into April 28, 2013. As he was entering he met Mr. Traynor, a principal in Licensee limited corporation. He identified himself to Mr. Traynor and asked him to accompany him outside to hear the music. They went outside and listened for a while and the supervising officer explained to Traynor the rules concerning amplified music. The officer then entered the premises and determined that the source of the music was a band using speakers to amplify its music. The officer then departed the premises at 12:10 a.m. on April 28, 2013 and noted that he could hear music emanating from the licensed premises at the same distances that he had heard it prior to entering (N.T. 24-25).
 10. On May 18, 2013, a supervising officer of the Bureau arrived at the licensed premises at 10:50 p.m. He parked his vehicle on Third Street at the intersection of Third and Herr Streets, on the opposite side of Third Street from the licensed premises. As he got out of his vehicle he could hear loud music emanating from the licensed premises. The officer

conducted a sound check. He walked in a westerly direction down Herr Street to the intersection of Herr and Green where he could still clearly hear music coming from the licensed premises.

The officer then returned to the licensed premises and walked in the front door of the premises. The officer found the music to be extremely loud. The music was being played by a disc jockey. The officer attempted to speak to the doorman and find out who was in charge. The officer and the doorman were yelling at each other in an effort to communicate. The officer attempted to find someone in charge but was unable to do so. The officer was eventually introduced to a gentleman named Justin Leach who indicated that he was in charge of the business on that evening. The officer and Leach walked down a long hallway where the officer observed at least a dozen people smoking (N.T. 28, 30-32).

11. Ned Hoffner resides at 1100 Green Street which is at the corner of Green and Herr Streets in Harrisburg. The front of Hoffner's home faces the licensed premises (N.T. 3536).
12. On February 15, 16, March 1, 3, 7, 31, April 2 and 5, 2013, Hoffner was disturbed in his residence by amplified music emanating from the licensed premises. The music would start at 10:00 and last until between 1:00 a.m. and 2:00 a.m. the next morning (N.T. 36-37). On the aforementioned nights, the music made it difficult for Hoffner to sleep (N.T. 38-39).
13. Susan Gay Carter resides at 266 Herr Street in Harrisburg. Her home is directly across Susquehanna Street from the licensed premises and is a little less than 10 yards away from the building which houses the licensed premises (N.T. 42-43).
14. On April 25, 27 and May 18, 2013, Miss Carter was disturbed by amplified music emanating from the licensed premises. The music would start at approximately 10:00 p.m. and would go until approximately 2:00 a.m. the next morning. Ms. Carter found the music to be extremely aggravating and at times it prevented her from falling asleep (N.T. 42-48).
15. On February 15, 16, March 1, 3, 7, April 2 and 5, 2013, the music emanating from the licensed premises was amplified through speakers (N.T. 14).

CONCLUSIONS OF LAW:

Counts 1, 2, and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since June 26, 2009, and has had six prior violations:

IN RE:

Citation No. 09-2920. Fine \$250.00.

1. Loudspeakers. November 18 and 21, 2009.

Citation No. 10-0322X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 23, 2009.

Citation No. 10-0458. Fine \$500.00.

1. Loudspeakers. December 5, 2009, January 7, 8, 9, 10 and 14, 2010.
2. Noisy and/or disorderly operation. January 7, 8, 9, 10 and 14, 2010.

Citation No. 10-0984. Fine \$750.00.

1. Noisy and/or disorderly operation. January 30, February 6, 12, 19, 26, 27, 28, March 7 and 14, 2010.
2. Loudspeakers. February 28, 2010.

Citation No. 10-1292X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 9, 2010.

Citation No. 10-1585. Fine \$1,300.00 and Amusement Permit suspended 2 days.

1. Loudspeakers. April 22 and May 8, 2010.
2. Smoked and/or permitted smoking in a public place where smoking was prohibited. May 6, 2010.

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.

Counts 2 and 3 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$550.00 fine
Counts 2 & 3 merged - \$1,000.00 fine and 4 days suspension of Amusement Permit.

ORDER

THEREFORE, it is hereby ordered that Licensee BARTLETT TRAYNOR & LONDON, LLC, pay a fine of \$1,550.00 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.

IT IS FURTHER ORDERED that Licensee's Amusement Permit be suspended for a period of three days **BEGINNING** at 7:00 a.m. on Thursday, May 22, 2014 and **ENDING** at 7:00 a.m. on Sunday, May 25, 2014.

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 for the entire three days suspension.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee may remove the label on May 25, 2014 at 7:00 a.m.

Jurisdiction is retained.

Dated this 17TH day of April, 2014.



Daniel T. Flaherty, Jr., J. an

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 submit stub with payment

The fine must be paid by a check drawn on the business or trust account of your attorney, who must be licensed in this Commonwealth, a treasurer's check, cashier's check, or money order. **Personal and business checks are not acceptable unless they are certified by your bank.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation (please use the Return Stub when mailing payment or write your citation number on the check) to:

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

IN RE: CITATION NO. 13-1516
BARTLETT TRAYNOR AND LONDON, LLC