

Mailing Date: APR 11 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. 13-1815
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-463090
	:	
	:	
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 September 5, 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 two counts.

The first count charges Licensee with violation of Section 493(34) of the Liquor Code [47 P.S. §4-493(34)] in that on June 7, 14, 15 and 16, 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 second 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 June 15, 2013, Licensee, by its servants, agents or employees, smoked and/or permitted smoking in a public place where smoking is prohibited.

The investigation which gave rise to the citation began on June 7, 2013 and was completed on July 30, 2013; and notice of the violation was sent to Licensee by Certified Mail on August 16, 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 AND 2

1. On June 14, 2013, an officer of the Bureau made an undercover visit to the licensed premises, arriving at 12:12 a.m. The officer parked on Third Street. As he got out of his vehicle, he could hear loud music emanating from the licensed premises. The officer conducted a sound check and could hear music emanating from the licensed premises at a distance of 158 feet away (N.T. 10). The officer returned to the corner of Herr and Third Streets and again paced in a northeasterly direction along Herr Street until he could no longer hear music emanating from the licensed premises (N.T. 10-11).
2. The officer entered the licensed premises where he observed a band playing amplified music (N.T. 11).
3. On June 15, 2013, the officer returned to the licensed premises, arriving at 12:27 a.m. The officer again heard loud music emanating from the licensed premises. He paced in a southwesterly direction on Herr Street. He crossed the alley right next to the sidewalk of the complainant, Susan Carter, and paced 166 feet until he could no longer hear music emanating from the licensed premises. The officer entered the licensed premises where he observed a band playing music that was amplified (N.T. 11-12).
4. On June 15, 2013, while in the licensed premises, the officer observed a gentleman who was the "sound man" for the licensed premises, smoking in a hallway on the licensed premises (N.T. 12).
5. The officer returned to the licensed premises later on June 15, 2013 at 11:10 p.m. At the time he arrived, he heard music emanating from the licensed premises. The officer

- conducted a sound check and could hear music emanating from the licensed premises at distances up to 122 feet (N.T. 12-13). The officer entered the establishment where he observed a band performing amplified music (N.T. 13-14).
6. The officer left the premises at 12:05 a.m., now June 16, 2013 and could again hear music emanating from the licensed premises at distances up to 122 feet (N.T. 14).
 7. As of June 15, 2013, Licensee did not have an exception granted by the Pennsylvania Department of Agriculture, Pennsylvania Clean Indoor Air Act to permit smoking on the licensed premises (N.T. Exhibit C-3).
 8. Susan Gay Carter resides at 266 Herr Street, Harrisburg, PA. The building in which she resides is immediately next to the licensed premises. The side of her home runs the entire length of the side of the licensed premises, and is separated from the licensed premises by a space of ten (10) feet (N.T. 19-20).
 9. On June 7 and 14, 2013, Ms. Carter was disturbed by amplified music emanating from the licensed premises from 10:00 p.m. until 1:30 to 2:00 a.m. the following morning (N.T. 20-23).

CONCLUSIONS OF LAW:

Counts 1 and 2 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.

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

Count 1 - \$1,000.00 fine and 3 days suspension of Amusement Permit
Count 2 - \$ 500.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee BARTLETT TRAYNOR & LONDON, LLC, pay a fine of \$1,500.00 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 Monday, May 19, 2014 and **ENDING** at 7:00 a.m. on Thursday, May 22, 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 22, 2014 at 7:00 a.m.

Jurisdiction is retained.

Dated this 9TH day of April, 2014.



Daniel T. Flaherty, Jr., J.

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. 13-1815 BARTLETT TRAYNOR AND LONDON, LLC