

Mailing Date: July 30, 2014

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR CONTROL	:	Citation No. 13-1815
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 11, 2014, wherein the ALJ sustained Citation No. 13-1815 and

imposed a fine of one thousand five hundred dollars (\$1,500.00) as well as a suspension of Licensee's amusement permit for three (3) days.

On September 5, 2013, the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau") issued the Citation to Licensee, charging it with two (2) counts. The first count charged Licensee with violating subsection 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 outside 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 Licensee's property line. The second count charged Licensee 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 June 15, 2013, 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 11, 2014, the ALJ sustained both charges and imposed a one thousand dollar (\$1,000.00) fine and an amusement permit

suspension of three (3) days at count one and a fine of five hundred dollars (\$500.00) at count two. 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 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).

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

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.

With respect to count one, subsection 493(34) of the Liquor Code provides that a licensee may not:

. . . use or permit to be used inside or outside of the licensed premises a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, can be heard beyond the licensee's property line; . . .

[47 P.S. § 4-493(34)]. In this case, based on the testimony of a Bureau enforcement officer as well as one (1) of Licensee's neighbors, the ALJ found that Licensee violated subsection 493(34) on the dates charged.

The record reveals that during undercover visits on June 14 and 15, 2013, a Bureau officer heard, from various points off Licensee's property, amplified music emanating from the licensed establishment. (N.T. 10-12). The officer's visit on June 15 extended past midnight, and the music continued into the early morning of June 16, 2013. (N.T. 13-14). In addition, a woman residing near the licensed establishment testified that she was disturbed by amplified music coming from the licensed premises on June 7 and 14, 2013. (N.T. 20-23). Clearly there is substantial, undisputed evidence that Licensee's loudspeakers produced music which could be heard beyond Licensee's property line on the dates charged. Therefore, the ALJ's decision was amply supported and was not an error of law.

As to the second count, 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, the same Bureau officer who observed the loudspeaker violations discussed above also witnessed a smoking violation on June 15, 2013. During his undercover visit on that date, the officer observed a man smoking in a hallway inside the licensed establishment. (N.T. 12). The officer's testimony in conjunction with the attestation from the Pennsylvania Department of Health [Ex. C-3], indicating

Licensee was not exempt from the smoking prohibition, demonstrate that Licensee allowed smoking in a public place where smoking was prohibited by law on the date charged. This violation of the Clean Indoor Air Act [35 P.S. § 637.6(a)(2)] constitutes sufficient cause to find Licensee in violation of section 471 of the Liquor Code [47 P.S. § 4-471].

Based on the undisputed testimony² at the hearing, it is clear that the ALJ's Findings of Fact are supported by substantial evidence and that his decision to sustain both charges was not an error of law. Consequently, 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 one thousand five hundred dollars (\$1,500.00) has not been paid. Licensee is hereby ordered to pay the fine in the amount of one thousand five hundred dollars (\$1,500.00). Failure to pay the fine within twenty (20) days of the mailing date of this Order will result in license suspension and/or revocation.

It is further ordered that Licensee's amusement permit be suspended for a period of three (3) days, beginning at 7:00 a.m. on Monday, September 8, 2014, and ending at 7:00 a.m. on Thursday, September 11, 2014.

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

Board Secretary