

Mailing Date: APR 05 2016

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

PENNSYLVANIA STATE : In re Citation No. 15-1132  
POLICE, BUREAU OF :  
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W01-491040  
 :  
 v. : PLCB LID No. 49226  
 :  
 1140 EKG, INC. : PLCB License No. R-AP-SS-11091  
 3645 E. THOMPSON ST. :  
 PHILADELPHIA, PA 19134-5511 : Philadelphia County

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE: John Galdo

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 30, 2015. There are two counts in the citation.

The first count alleges that Licensee violated the Liquor Code, 47 P.S. §4-493(34), on February 10, 11, 13, 14, 15, 17, 20, 21, 26, 27, 28; March 1, 5, 6, 7, 8, 12, 14, 15, 17, 18, 21, 22 and 24, 2015, by permitting the use on the inside and/or outside of the licensed premises of 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 alleges that Licensee violated the Liquor Code, 47 P.S. §4-471, on February 10, 11, 13, 14, 15, 17, 20, 21, 26, 27, 28; March 1, 5, 6, 7, 8, 12, 14, 15, 17, 18, 21, 22 and 24, 2015, by operating the licensed establishment in a noisy and/or disorderly manner.

A hearing was held on Thursday, February 25, 2016, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

**FINDINGS OF FACT:**

1. A woman who lives across the street from Licensee's premises complained to the Bureau about hearing music inside her house between 9:00 p.m. and 2:00 a.m., and also that people outside were being disorderly. A liquor enforcement officer visited this woman on February 12, 2015, and asked her to keep a log of the times she heard music inside her home. He and another officer also visited the licensed premises for a half-hour at 11:45 a.m. and observed no violations. They mentioned the complaint to Licensee's president, who said they were doing some soundproofing and would keep an eye on the noise level (N.T. 6-8, 17).

2. On May 7, 2015, the officer visited the premises at 2:20 p.m. and observed no violations. He saw that there were various loudspeakers inside the premises. Later that day he spoke with Licensee's president, who said that there had been a band on May 6, but that any other music in the premises would have been coming from a juke box. (N.T. 8-9).

3. The woman who lived across the street from the licensed premises heard bass vibrations that would start at 8:30 or 9:00 p.m. and continue until 2:00 a.m. On at least three occasions she saw that the source of the music was live bands, which she saw unloading equipment at the side of the licensed premises (N.T. 17-18).

4. The woman recorded instances of disturbance in the noise log the officer had left. Her notations related to the evening hours beginning on February 13, 20, 26, 27, 28, March 6, 7, 14, 17, and 21, 2015, and in each case continuing until 1:30 or 2:00 a.m. the next day. She described her entry "loud music" on February 13 as coming from a band which she had seen unloading at the premises. It caused the windows of her house to vibrate (N.T. 19-21, Exhibit B-3).

5. The woman's entry for February 20 also involved a live band, which she heard from 10 p.m. until 2:00 a.m. On February 26 the woman did not see band equipment coming into the premises, but was disturbed by loudspeakers, which she assumed were being used by a DJ. On the other dates recorded in the log, February 27, 28, March 6, 7, 14, 17, and 21, 2015, the woman's observations were similar as to the character and source of the noise (N.T. 21-25, Exhibit B-3).

6. Another woman who also lives directly across the street from the licensed premises, the next-door neighbor of the first woman, also kept a log of instances when she was disturbed by music coming from the licensed premises. These disturbances began in the evenings of February 13, 17, 28, March 5, 17, 21, and 24, 2015. On most of these dates the complaint was music coming from the premises, but on the incident beginning on February 28 she was disturbed at 2:30 a.m. by departing patrons arguing, fighting and rolling around in the street (N.T. 35-39, Ex. B-4).

7. On March 5, 2015, a door and a rear window at the licensed premises had been left open, through which the second woman could hear a band playing. On March 17 she was disturbed by people outside smoking and being loud. On March 21 she heard music and drums outside, people singing "Happy Birthday" at 1:30 a.m. the next day. On March 24 the music was continuous, coming from a band she had seen unload at the licensed premises (N.T. 39-41).

8. Licensee has installed soundproofing material at the licensed premises to better contain the sound (N.T. 57-62, Exhibit L-1).

#### CONCLUSIONS OF LAW:

Licensee violated the Liquor Code, 47 P.S. §4-493(34), on February 13, 17, 20, 21, 26, 27, 28; March 6, 7, 14, 15, 17, 18, 21, 22 and 24, 2015, by permitting the use on the inside of the licensed premises of a loudspeaker whereby the sound of music could be heard beyond Licensee's property line.

Licensee violated the Liquor Code, 47 P.S. §4-471, on February 13, 17, 20, 21, 26, 27, 28; March 6, 7, 14, 15, 17, 18, 21, 22 and 24, 2015, by operating the licensed establishment in a noisy and/or disorderly manner.

DISCUSSION:

Licensee's evidence questioned the motives and veracity of the witnesses who complained, but I resolved the credibility question in favor of the government.

PRIOR RECORD:

Licensee has been licensed since April 10, 2002, and has had prior violations as follows:

In re Citation No.11-0046. \$200.00 fine.

1. Loudspeakers could be heard outside. November 6, 20 and December 18, 2010.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type. The two counts are merged for penalty purposes.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 1140 EKG, Inc., License No. R-AP-SS-11091, shall pay a fine of five hundred dollars (\$500.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 1<sup>ST</sup> day of APRIL, 2016.



David L. Shenle, J.

**NOTICE: 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.**

**WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.**

**THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.**

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

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The fine must be paid by cashier's check, money order, or a check drawn on the account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** If you are paying by guaranteed check, please make it 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

In re Citation No. 15-1132  
1140 EKG, Inc.