

Mailing Date: OCT 19 2016

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 16-0453
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-502923
v.	:	
	:	
TURNBAUGH'S PLACE, INC.	:	PLCB LID No.: 63988
T/A TURNBAUGH'S PLACE	:	
100 MARKET ST.	:	
NEWPORT, PA 17074-1514	:	PLCB License No.: R-AP-SS-20262
	:	
PERRY COUNTY	:	

**ADJUDICATION**

BEFORE: Ember S. Jandebour, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

LICENSEE COUNSEL: James M. Petrascu, Esquire

**BACKGROUND:**

This proceeding arises out of a citation, containing one count that was issued on March 31, 2016, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Turnbaugh's Place, Inc. (Licensee).

The citation charges Licensee with a violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(3) and 4-493(16)]. The charge is that Licensee, by your servants, agents, or employees, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m., on December 27, 2015.

I presided at an evidentiary hearing on September 21, 2016 at 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

**STIPULATED FINDINGS OF FACT:**

1. On March 17, 2016, the Bureau of Liquor Control Enforcement mailed a notice of violation to the Licensee. Licensee received the notice. (Commonwealth Exhibit No. C-1)
2. On March 31, 2016, the Bureau of Liquor Control Enforcement issued a citation against the Licensee. Licensee received the citation. (Commonwealth Exhibit No. C-2)
3. The Licensee has two prior violations. (Commonwealth Exhibit No. C-3)

**FINDINGS OF FACT:**

4. The Bureau began its investigation on October 15, 2015 and completed it on March 2, 2016. (Commonwealth Exhibit No. C-1, N.T. 9)
5. On December 27, 2015, Liquor Control Enforcement Officer Daniel Wentsler visited the Licensee's establishment. (N.T. 12)
6. Officer Wentsler ordered a beer at 2:15 a.m., received it, and left the premises with it at 2:18 a.m. (N.T. 13-14)
7. Officer Wentsler did not hear any announcement for last call. (N.T. 14)
8. Officer Wentsler used his cellular telephone to keep track of the time. (N.T. 12)
9. Gary Turnbaugh testified for the Licensee. (N.T. 30)
10. The Licensee's clock is kept 15 minutes ahead. (N.T. 33)
11. Recently, the Licensee changed the clock to reflect four minutes ahead. (N.T. 34)
12. The Licensee does last call at 1:45 a.m. (N.T. 35)
13. Gary Turnbaugh recollects selling Officer Wentsler his second beer at 1:54 a.m. (N.T. 36)

**CONCLUSION(S) OF LAW:**

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. I sustain the violation as charged.

**DISCUSSION:**

The burden of proof in a citation proceeding involving a violation of the Liquor Code is upon the Bureau and the Bureau must prove its case by a clear preponderance of the evidence. Omicron Enterprises, 68 Pa. Cmwlth. 568, 449 A.2d 857 (1982).

Section 4-406 subsection (a)(3) of the Liquor Code states:

“Hotel and restaurant liquor licensees... may sell liquor and malt or brewed beverages on Sunday between the hours of eleven o'clock antemeridian and two o'clock antemeridian Monday...” 47 P.S. §4-406(a)(3).

On December 27, 2015, Officer Daniel Wentsler entered the Licensee's establishment at 1:33 a.m. (N.T. 12). At 2:10 a.m., the other patrons left. (N.T. 13) At 2:15 a.m., Officer Wentsler asked for a second beer. At 2:18 a.m., Officer Wentsler left with his beer.

On December 27, 2015, Gary Turnbaugh was bartending at the Licensee's establishment. (N.T. 32) Mr. Turnbaugh testified on behalf of the Licensee. He stated that they (the Licensee) keep the bar clock 15 minutes ahead because they have trouble getting people out at closing time. (N.T. 34) Mr. Turnbaugh stated that Officer Wentsler ordered his first beer at 12:30 - 1:00 a.m. and his (Wentsler's) second beer at 1:54 a.m.

Clearly, there is a discrepancy between the Officer's recollections and Mr. Turnbaugh's recollections. Mr. Turnbaugh denied any sales past the legal hour. (N.T. 25)

Officer Wentsler did not alert Mr. Turnbaugh that he was an undercover liquor enforcement officer. Officer Wentsler did not discuss the alleged violation with Mr. Turnbaugh. (N.T. 20)

On March 2, 2016, two months after the incident, another liquor control officer visited Licensee's establishment in uniform. Officer Harry Royer discussed the incident with Mr. Turnbaugh who, as noted above, denied any after hour sales. (N.T. 25) Mr. Turnbaugh testified under oath that he remembered Officer Wentsler. I find Mr. Turnbaugh's memory remarkable after such passage of time. Mr. Turnbaugh would have us believe, despite Officer Wentsler's testimony, that Officer Wentsler was incorrect or confused about the time of the alleged after hours sale because of the establishment's visible clock, and that the establishment sets it approximately 15 minutes ahead.

I do not find Mr. Turnbaugh's testimony credible. Officer Wentsler has been a liquor control officer for nearly six years. (N.T. 9) He is well versed in conducting undercover inspections and rendering a report of the inspection. He is accustomed to keeping track of and reporting time increments in his reports. During his testimony Officer Wentsler recited several visits to Licensee's establishment, and for all visits he clearly testified about his arrival and departure times. (N.T. 9-12)

I believe the preponderance of the evidence lies in favor of the Bureau. I find that Officer Wentsler's testimony to be forthright and accurate.

#### **PRIOR ADJUDICATION HISTORY:**

Licensee has been licensed since March 1, 2011, and has the following Adjudication history:

In Re Citation No.: 14-1977. Fine \$250.00.

Smoked and/or permitted smoking in a public place where smoking was prohibited on March 22, April 5 and 17, 2014.

In Re Citation No.: 15-1591. One day suspension.

Corporate vice president was visibly intoxicated on the licensed premises on July 28, 2015.

#### **PENALTY ASSESSMENT CRITERIA:**

Liquor Code Section 471 [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 the violation found herein.

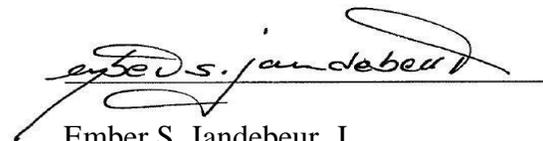
I impose a \$1,400.00 fine.

**ORDER:**

Licensee must pay a \$1,400.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 12<sup>TH</sup> day of October, 2016.



Ember S. Jandebaur, J.

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If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us). The full requirements for an appeal can be found in 47 P.S. §4-471.

**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 an attorney's check who is licensed to practice law in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check 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

**Credit/Debit Cards may be used:** if you have already registered with PLCB+ you should be able to pay by Credit/Debit card; if you have not registered with PLCB+ you may obtain the information on how to register by sending an email message to: [RA-LBLICENSINGMOD@pa.gov](mailto:RA-LBLICENSINGMOD@pa.gov).