

Mailing Date: NOV 14 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 04-1190
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-284205
v.	:	
	:	LID - 46717
FORKSVILLE INN & TAVERN	:	
RR1, BOX 1035A	:	
FORKSVILLE, PA 18616-9801	:	
	:	
	:	
SULLIVAN COUNTY	:	
LICENSE NO. H-AP-SS-3846	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
John H. Pietrzak, Esquire

For Licensee
George A. Stapp, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 15, 2004, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against FORKSVILLE INN & TAVERN, License Number H-AP-SS-3846 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on December 20, 2003, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one female minor, twenty years of age.

The investigation which gave rise to the citation began on December 20, 2003 and was completed on June 24, 2004; and notice of the violation was sent to Licensee by Certified Mail on June 25, 2004. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 21, 2005 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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:

1. K.A.P. was born on June 3, 1983, and, in December of 2003, she was twenty years old (N.T. 12).

2. On December 20, 2003 K.A.P. went to the licensed premises to attend a Christmas party with her boyfriend (N.T. 12).

3. As K.A.P. entered the licensed premises, she was asked for identification. She did not have any with her and Licensee's personnel assumed that she was not yet twenty one years old (N.T. 13).

4. While she was on the licensed premises, attending the party, K.A.P. obtained for herself and consumed beer from a keg that had been set up for the party (N.T. 14-15 & 18).

5. K.A.P. obtained the beer that she drank from the keg while no one was looking, and drank it where no one could see her doing so (N.T. 12 and 22-23).

CONCLUSIONS OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

Licensee is deemed to have permitted the minor in question to be furnished alcoholic beverages. The charge in the citation must, therefore, be sustained.

The citation in this case charges Licensee with, inter alia, permitting a minor to be furnished alcoholic beverages.

The Commonwealth Court of Pennsylvania has held that a liquor licensee is deemed to have permitted alcoholic beverages to be furnished or given to a minor if he/she acquiesce by failing to prevent such from occurring. *Commonwealth of PA Liquor Control Board v. Abraham*, 541 A.2d 1161 (Pa. Cmwltth 1988).

In this case Licensee failed to prevent the minor in question from being furnished alcoholic beverages, and is therefore deemed to have permitted such to occur.

Based upon the foregoing, I conclude that the charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since September 14, 2000, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be a three days suspension.

I take official notice of the records of the Pennsylvania Liquor Control Board. Licensee has not been certified to be in compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to Responsible Alcohol Management. I urge Licensee to comply with these requirements. Licensee may wish to call the Pennsylvania Liquor Control Board's RAMP Office at 1-866-275-8237 or visit its web site www.lcb.state.pa.us/edu.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the hotel liquor license of FORKSVILLE INN & TAVERN, License No. H-AP-SS-3846 be suspended for a period of three days **BEGINNING** at 7:00 a.m. on Monday, December 12, 2005 and **ENDING** at 7:00 a.m. on Thursday, December 15, 2005.

Licensee is directed on December 12, 2005 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

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

Licensee is authorized on December 15, 2005 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 2nd day of November, 2005.

Daniel T. Flaherty, Jr., J.

an

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.