

Mailing Date: DEC 12 2005

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0859
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-303962
	:	
v.	:	LID - 18574
	:	
SWIHART'S HARBOR LOUNGE INC	:	
T/A SWIHART'S HARBOR LOUNGE	:	
US RTE 422 : R D 1	:	
EDINBURG PA 16116-9402	:	
LAWRENCE COUNTY	:	
LICENSE NO. R-AP-17312	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement For Licensee Nadia Vargo, Esquire No Appearance.

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 11, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Swihart's Harbor Lounge, Inc., t/a Swihart's Harbor Lounge, License Number R-AP-17312 (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 February 4, 2005, Licensee, by its servants, agents or employees, sold, furnished

and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

Citation Number 05

An administrative hearing was conducted on October 26, 2005, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on January 10, 2005, and completed its investigation on March 25, 2005. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated April 11, 2005, which was sent by certified mail and received by Licensee on April 12, 2005. (Exhibit C-2)
3. The citation was issued on May 11, 2005, and was sent by certified mail and received by Licensee on May 13, 2005. (Exhibits C-3, C-4)
4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on September 9, 2005, by certified mail and first class mail.
5. The aforementioned certified mailing of the notice of hearing was signed for and received by Licensee on September 17, 2005.
6. On February 3, 2005 at 11:30 p.m., Liquor Enforcement Officer Douglas E. Keys entered Licensee's premises in an undercover capacity, took a seat at the bar, and observed two males playing pool. (N.T. 7)
7. While observing the two males at the pool table, Officer Keys noted that one of the males heard to be called "Tom" was walking with a staggered gait and used the pool cue as a cane for support. "Tom" was also observed dropping his pool cue and bumping into the pool table and wall. (N.T. 7-8)
8. Upon completion of the pool game, "Tom" walked with a staggered gait towards the bar, leaned on the bar for support, and stumbled into a bar stool at the bar. (N.T. 8)

9. "Tom" took a seat at the bar next to Officer Keys and began a conversation with slurred speech. Officer Keys further noted that "Tom's" eyes were extremely red and his eyelids were half shut. It was necessary for Officer Keys to ask "Tom" to repeat himself on several occasions as it was very difficult to understand him due to his slurred speech. Officer Keys also noted that "Tom" had an odor of alcohol on his breath. (N.T. 8-9)

Citation Number 05

10. At 12:20 a.m., then being February 4, 2005, the bartender approached "Tom" and asked if he wanted another drink. "Tom" replied in the affirmative at which time the bartender served him a draft beer. At this time, "Tom" reached into his pocket and pulled out a handful of change. Upon observing that "Tom" was having a great deal of difficulty counting out the change, the bartender counted the change for him as she took it from his hand and then rang it up on the cash register. (N.T. 9-10)

11. Following the consumption of the draft beer, "Tom" went to the other side of the bar to speak to a female patron. After observing "Tom" for a few more minutes, Officer Keys departed Licensee's premises. (N.T. 10)

DISCUSSION:

Upon review of the testimony and evidence presented, this court is of the opinion that the testimony presented by Officer Keys relative to the visibly intoxicated condition of the patron referred to as "Tom" is sufficient to establish the violation as charged. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982). *Smart, Inc. v. Pennsylvania Liquor Control Board*, 328 A.2d 923 (Pa. Cmwlth. 1974)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4471] have been satisfied.
2. On February 4, 2005, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron, in violation of Section 493(1) of the Liquor Code.

PRIOR RECORD:

SWIHART'S HARBOR LOUNGE, INC.

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Licensee has been licensed since May 15, 1984, and has had five prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 91-1100. Fine \$100.00.

1. Purchased malt or brewed beverages on credit.

Citation Number 05

Citation No. 98-1546. Fine \$100.00.

1. Sold alcoholic beverages after its restaurant liquor license expired and had not been renewed and/or validated.

Citation No. 00-1537. Fine \$200.00.

1. Sold alcoholic beverages after its restaurant liquor license expired and had not been renewed and/or validated.

Citation No. 00-1950. Fine \$200.00.

1. Sold alcoholic beverages after its restaurant liquor license expired and had not been renewed and/or validated.

Citation No. 03-0718. Fine \$250.00.

1. Fortified, adulterated and/or contaminated liquor.
April 1, 2003.

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.

This court is of the opinion that Licensee's furnishing of alcoholic beverages to a visibly intoxicated person constitutes a severe offense, in that it is reasonably foreseeable that such individuals may jeopardize the safety of third parties either while on the premises or while operating a motor vehicle.

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Licensee is advised to engage its management and staff in the Responsible Alcohol Management Program (RAMP) to detect and deter minors and/or visibly intoxicated persons by contacting the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone Number: 1-866-275-8237; Web Site: www.lcb.state.pa.us).

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,250.00.
Citation Number 05

ORDER:

THEREFORE, it is hereby ordered that Swihart's Harbor Lounge, Inc., t/a Swihart's Harbor Lounge, License Number R-AP-17312, pay a fine of \$1,250.00 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.

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

Jurisdiction is retained to ensure compliance with this Order.

Dated this 5th day of December, 2005.

Roderick Frisk, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW

SWIHART'S HARBOR LOUNGE, INC.

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JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.