

Mailing Date: JUL 11 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0938
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-302596
	:	
RADAFR INC.	:	
T/A CALLAHAN'S IRISH PUB	:	LID - 41068
7681 FRANKFORD AVE.	:	
PHILADELPHIA PA 19136-3634	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-9122	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 16, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Radafr, Inc., t/a Callahan's Irish Pub, License Number R-AP-SS-1922 (hereinafter "Licensee").

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An Administrative hearing was held on Tuesday, October 18, 2005, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation, but not as to its timeliness.

The citation contains three counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5513 of the Crimes Code, 18 Pa. C.S. Section 5513, in that on January 15, 2005, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on January 15, 2005, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on January 15, 2005, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. Officer John Darby is employed by the Haverford Township Police Department. On January 15, 2005, Officer Darby was employed by the Bureau as an Enforcement officer. During that time, he conducted an investigation of the licensed premises. On January 15, 2005, he arrived at the premises at approximately 1:40 a.m. He was keeping time with his wristwatch, which had been synchronized with KYW News Radio (N.T. 6).

2. Officer Darby entered the premises through a door on Frankford Avenue. He entered the foyer and was greeted by a doorman. He doorman was 6' tall, weighing approximately 200-225 pounds. He was bald and was wearing jeans and a t-shirt (N.T. 7-8)

3. The officer noted that there was a stage area and a mini dance floor and also seats along the left hand side of the wall. The bar was to the right hand side and there was a restaurant area in the rear (N.T. 8).

4. The officer took a seat at the bar approximately fifteen to twenty feet inside the premises. He noted that there were approximately forty-five patrons on the premises. The bar was open and operating. There were two male bartenders on duty (N.T. 7-8).

5. The third floor is an open area and does not have partitions or other obstructions. While on the premises, the officer ordered a Miller Lite bottle of beer. He also observed other patrons in possession of Miller Lite and Coors Light bottled beer. Other patrons had drinks in front of them. At approximately 1:50 a.m., a person, heard to be called Kenny, was over by the window area on the Frankford Avenue side playing a Dodge City Poker Machine. The officer heard him yell loudly that he had just won \$75.00. At that time, he was approximately twelve feet away from Kenny (N.T. 9-10).

6. The officer saw the doorman come over to the machine and told the bartender to pay the patron. The doorman went to the machine and played the points off (N.T. 10-11).

7. The bartender took U.S. currency out of the register and gave it to Kenny (N.T. 11).

8. The bartender then wrote something on a white piece of paper. The white piece of paper was approximately three inches by three inches. The bartender placed that piece of paper in the cash register (N.T. 11-12).

9. The officer had been trained to identify payoffs on gambling machines and gambling paraphernalia. He indicated that the Dodge City Poker Machine was not a gambling device *per se* because it did not have a knockoff device. However, the officer concluded that the Dodge City Poker Machine was used for gambling (N.T. 12-13).

10. The officer left the premises at approximately 2:15 a.m. There were still patrons inside when he left. Patrons were consuming alcoholic beverages including mixed drinks, Miller Lite and Coors Lite beer. He did not observe any sales after 2:00 a.m. (N.T. 13).

11. At the time the officer left, there were twenty to twenty-five patrons on the premises. The officer returned to his vehicle which was parked on the side where he could observe the front entrance of Frankford Avenue. The officer indicated that there was a light post right outside the front door. He remained in that position for approximately fifteen minutes until 2:30 a.m. During that time, he saw approximately eight patrons leave the premises (N.T. 14-15).

12. At approximately 2:35 a.m., he walked by the front window and looked inside and saw approximately twelve patrons sitting at the bar. They were still in possession of alcoholic beverages. The bartender was still behind the bar (N.T. 15).

13. The officer stood on the corner for approximately five minutes to see if all the patrons exited the premises. At 2:40 a.m., he walked by the window again and saw the same patrons still seated and consuming alcoholic beverages (N.T. 16-17).

14. The officer indicated that the window was about 3½' at eye level (N.T. 17).

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15. The Bureau's investigation began on December 13, 2004 and was completed on April 11, 2005. A notice of violation letter dated April 20, 2005 sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on April 21, 2005. A citation dated May 16, 2005 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received on May 16, 2005 (N.T. 18-19 and Exhibits B-1 and B-2).

16. The officer indicated that January 15, 2005 was his only visit to the licensed premises (N.T. 20).

17. The officer did not put any money in the machine nor did he actually go to the machine and place money in it. He did not seize the machine or have an opportunity to inspect it (N.T. 22).

18. The paper on which the bartender wrote information after paying Kenny U.S. currency was not recovered (N.T. 24-25).

19. The game broke up around 2:00 a.m. The officer indicated that they were breaking down equipment and taking it outside (N.T. 30-31).

20. Officer Zimmerman, who is now in the Pittsburgh office, took over the investigation from Officer Darby. He made a visit to the premises on April 12, 2005 at 1:15 a.m. but did not find any violations on that occasion (N.T. 32).

CONCLUSIONS OF LAW:

Count No. 1 - On January 15, 2005, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, and Section 5513 of the Crimes Code, 18 Pa. C.S. Section 5513.

Count No. 2 - On January 15, 2005, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 3 - On January 15, 2005, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

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PRIOR RECORD:

Licensee has been licensed since November 6, 1997, and has a record of prior violations as follows:

Citation No. 99-0792. \$300.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
February 6, 14 and March 27, 1999.

Citation No. 02-1778. \$1,500.00 fine.

1. Sales to minors.
September 5, 2002.

DISCUSSION:

Licensee argues that there was insufficient notice with regard to the violation of January 15, 2005, in that the notice letter was not sent out until April 20, 2005. The delay was caused by a change in Bureau personnel and it was not an extraordinary delay. The second officer made one additional visit to the licensed premises. On that occasion, the officer found no evidence of any wrongdoing. He closed the investigation and promptly sent a notice of violation letter.

With regard to the gambling, Licensee's attorney argues that no one actually saw the individual insert money into the machine. The officer was familiar with the machine. The individual's own statement and physical position indicated that he had been playing the machine. The fact that he was paid money after announcing that he won, was sufficient indication and inference that he had in fact played this machine. The officer was knowledgeable as to how the machine is operated, that is to say with the insertion of monies. All factors considered, the evidence was sufficient to find that the machine was utilized for gambling and that the bartender, upon direction from the doorman, paid off the patron after he accumulated points on the machine.

Finally, the evidence was sufficient to show that the Licensee permitted individuals in the bar to remain past 2:30 a.m. There is no indication that anyone was served additional alcoholic beverages, but they did fail to vacate the premises in a timely fashion. The officer was in a position to observe the patrons in possession of alcoholic beverages and to relate that information to the Court.

Licensee has two prior violations, the last one in 2002. Under the circumstances, moderate monetary penalties shall be imposed.

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PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$400.00.

Count Nos. 2 and 3 (as merged) - \$400.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Radafr, Inc., t/a Callahan's Irish Pub, License Number R-AP-SS-9122, pay a fine of Eight Hundred Dollars (\$800.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

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, along with any required documentation, to:

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

Dated this 6th day of July, 2006.

Tania E. Wright, J.

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NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.

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