

Mailing Date: JUL 17 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-0974
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-303779
v.	:	
	:	LID - 24073
LINCOLN BAR & GRILLE, INC.	:	
T/A LINCOLN BAR & GRILLE	:	
701 W. MARKET STREET	:	
YORK, PA 17404-3673	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-12029	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovettte, Esquire

For Licensee
L.C. Heim, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 19, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against LINCOLN BAR & GRILLE, INC., License Number R-AP-12029 (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 January 5, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The investigation which gave rise to the citation began on January 5, 2005 and was completed on April 8, 2005; and notice of the violation was sent to Licensee by Certified Mail on April 28, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 9, 2005 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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. On January 5, 2005, an officer of the Bureau entered the licensed premises at about 10:00 p.m. (N.T. 7).

2. Upon entry the officer observed a female bartender rendering service to approximately eight patrons (N.T. 7).

3. The officer took a seat at the bar approximately five feet away from a male patron who was slumped over the bar, laying on his hands. His eyes were closed, and he appeared to be asleep (N.T. 8).

4. The officer observed the aforementioned patron for approximately five minutes. At the end of that time the patron jumped up. The officer could see that his eyes were half masked and bloodshot. He stood there, his head bobbing. He was trying to stay awake. He swayed back and forth in his seat and he was continually struggling to keep his head up (N.T. 8).

5. At 10:15 p.m. the bartender came up to the patron who jumped up again and looked at her. She asked him if he wanted "another one." At that time, she went over to a tap marked "Coors Light," poured beer from the tap and brought it over and set it in front of the patron (N.T. 8-9).

6. The patron quickly drank the beer and got up from his seat. He lumbered up off his seat and was trying to keep his balance. He used the rim of the bar to hold himself up. He went from his seat and used the bar to get around the bar area to the other side where the bartender was located (N.T. 9).

7. The patron said something to the bartender, and the bartender advised him that she had called a taxi for him. He again made his way back staggering, holding onto the bar and trying to keep his balance. He then came the whole way back and flopped into his seat (N.T. 9).

CONCLUSIONS OF LAW:

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

DISCUSSION:

The record in this case establishes that the patron in question was seated at the bar laying on his hands with his eyes closed. His eyes were half closed and bloodshot. He swayed back and forth in his seat, and he struggled to keep his head up. These are clear signs of intoxication.

The record is also clear that while the patron was in the condition aforementioned, he was served a beer by the bartender.

Under these conditions I conclude that the Bureau has produced sufficient evidence to establish the charge in the citation. Consequently, that charge is sustained.

PRIOR RECORD:

Licensee has been licensed since August 16, 1989, 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 fine of \$1,250.00.

I take official notice of the records of the Pennsylvania Liquor Control Board that 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 Licensee LINCOLN BAR & GRILLE, INC., 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 or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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 pending final resolution of the penalty in this matter.

Dated this 10th day of July, 2006.

Daniel T. Flaherty, Jr., J.

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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.