

Mailing Date: DEC 08 2005

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1058
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W08-303957
v.	:	
	:	LID - 34339
BOOMERS INVESTMENT GROUP	:	
LTD	:	
T/A SEYMOUR DUCKS	:	
12179 SAGINAW DRIVE	:	
CONNEAUT LAKE PA 16316-8947	:	
	:	
	:	
CRAWFORD COUNTY	:	
LICENSE NO. H-AP-SS-5308	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Nadia Vargo, Esquire

For Licensee  
Cheryl Miller,  
Corporate Officer, Pro Se

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on June 3, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Boomers Investment Group, Ltd., t/a Seymour Ducks, License Number H-AP-SS-5308 (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 May 1, 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 female patron.

An administrative hearing was conducted on October 27, 2005, at 2084 Interchange Road, Erie, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee's Corporate Officer Cheryl Miller appeared on behalf of Licensee.

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 May 5, 2005. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated May 12, 2005, which was sent by certified mail and received by Licensee on May 13, 2005. (Exhibit C-2)
3. The citation was issued on June 3, 2005, and was sent by certified mail and received by Licensee on June 8, 2005. (Exhibits C-3, C-4)
4. On May 1, 2005 at 12:05 a.m., Liquor Enforcement Officer Douglas E. Keys entered Licensee's premises in an undercover capacity and observed two female bartenders rendering service of alcoholic beverages to approximately 50 patrons. (N.T. 8-9, 13, 16-17)
5. Upon entering, Officer Keys took a seat towards the middle of the left bar counter where there were four empty seats with bottled beer and some food on the bar in front of those seats. Officer Keys then purchased a 12-oz. bottle of Bud Light beer from one of the female bartenders. (N.T. 9-10, 17)
6. Several minutes later, Officer Keys observed two males and two females approach the bar counter where he was seated at which time he focused his attention on a female who appeared to be walking with a staggered gait as she bumped into chairs and other patrons. As this female patron approached the empty bar chairs, Officer Keys asked her if he was sitting in their seats. She replied in the negative and indicated that it was not a problem. During the course of this conversation, Officer Keys noted that this female patron spoke with slurred speech, had bloodshot eyes and had an odor of alcohol. Officer Keys further described this female patron as approximately 5'8" tall, 120-130 lbs., wearing blue jeans and a white shirt, with long, shoulder-length dark wavy hair. (N.T. 9-10, 18)

7. Officer Keys then noted that the aforementioned four individuals including the female patron in question began consuming the hors d'oeuvres and Miller Lite beer that was in front of them at the bar. While seated at the bar, this female patron twice grabbed a handful of popcorn and threw it over her head towards patrons seated at a table located behind her. On her third attempt to grab a handful of popcorn, her male companion stopped her and turned to the patrons seated at the table behind her and stated, "I'm sorry about that, you'll have to forgive her, she's, you know, extremely drunk tonight." (N.T. 10-11, 14)

8. The female patron in question then began singing very loudly and could be heard above the disc jockey's music and other patrons. (N.T. 11-12)

9. A short time later at approximately 12:45 a.m., a female bartender served a 12-oz. bottle of Miller Lite beer to the female and her male companion and removed the money from the bar top in front of this female patron in payment for the drinks. (N.T. 12-14)

10. After consuming half of the bottle of beer, the female patron in question screamed, "Let's go dance again." This patron along with the other female and two male companions returned to the dance floor and began dancing. (N.T. 13)

11. Officer Keys departed Licensee's premises at approximately 1:10 a.m. (N.T. 13)

#### DISCUSSION:

At the administrative hearing, Officer Keys testified that during the course of his undercover visit to Licensee's premises on May 1, 2005, between the hours of 12:05 a.m. and 1:10 a.m., he focused his attention on a female patron who, in his opinion, was displaying characteristics of visible intoxication, which included slurred speech, red eyes, a staggered gait, bumping into chairs and other patrons and conducting herself in a loud and boisterous manner. After observing this female patron in what he believed to be an intoxicated condition for a period exceeding one-half hour, Officer Keys noted that Licensee's bartender furnished both her and her male companion with bottled beer. After observing her consume approximately half of this bottle of beer, Officer Keys departed the premises.

Licensee's Corporate Officer and Shareholder Cheryl Miller, her husband James Miller who is also a shareholder and works at the premises on a part time basis as a security person, and bartender Mary Stein testified on behalf of Licensee. However, upon review of the transcript, the testimony provided by Licensee's witnesses lacked specificity as to the early morning hours of May 1, 2005, and provided no reasonable explanation to counter Officer Key's opinion that

this female patron was displaying characteristics of visible intoxication. Mr. Miller testified that throwing popcorn is a relatively common occurrence at the premises, however, notwithstanding that incident, this court believes that the testimony of Officer Keys is sufficient to establish the violation as charged by a preponderance of the evidence. *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. Cmlwth. 1974)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On May 1, 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 female patron, in violation of Section 493(1) of the Liquor Code.

PRIOR RECORD:

Licensee has been licensed since May 13, 1994, and has had two prior violations, to wit:

Citation No. 98-0085. Fine \$650.00.

1. Sales to visibly intoxicated persons.

Citation No. 98-1750. Fine \$750.00 and seven days suspension of Amusement Permit.

1. Sales to a visibly intoxicated person.

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.

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](http://www.lcb.state.pa.us)).

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,100.00.

BOOMERS INVESTMENT GROUP, LTD.

Citation Number 05-1058

ORDER:

THEREFORE, it is hereby ordered that Boomers Investment Group, Ltd., t/a Seymour Ducks, License Number H-AP-SS-5308, pay a fine of \$1,100.00 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 2<sup>nd</sup> day of December, 2005.

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