

Mailing Date: AUG 25 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1229
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-301089
v.	:	
	:	LID - 33959
FRATERNAL ORDER OF EAGLES	:	
SUNBURY AERIE NO. 503	:	
33 S. 3 RD STREET	:	
P.O. BOX 176	:	
SUNBURY, PA 17801-0176	:	
	:	
NORTHUMBERLAND COUNTY	:	
LICENSE NO. CC-1693	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas Ballaron, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 23, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against FRATERNAL ORDER OF EAGLES SUNBURY AERIE NO. 503, License Number CC-1693 (hereinafter "Licensee").

The citation charges Licensee with violation of Sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §§4-401(b) and 4-406(a)(1)] in that on April 30, 2005, Licensee, by its servants, agents or employees, sold alcoholic beverages to nonmembers.

The investigation which gave rise to the citation began on November 5, 2004 and was completed on May 23, 2005; and notice of the violation was sent to Licensee by Certified Mail on May 27, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 13, 2006 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. Licensee(s) did not appear at the hearing, nor did anyone appear on its behalf. A citation hearing notice was sent to Licensee(s) at its address of record, 33 S. 3rd Street, P.O. Box 176, Sunbury, PA 17801-0176 by certified mail, return receipt requested and by first class mail on February 28, 2006. The notice set forth the date and time of the hearing as April 13, 2006 at 2:00 p.m., and the place of hearing as PA Department of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

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 April 30, 2005 at 9:05 p.m. an officer of the Bureau parked his car alongside of the licensed premises. A male individual walked around him, inserted a key in the door and permitted him to enter (N.T. 8-9).

2. The officer entered the serving area of the licensed premises where he observed a male bartender rendering service to approximately 20 patrons (N.T. 9).

3. The officer approached the serving bar, made contact with the bartender and requested a 12 ounce bottle of Miller Lite beer (N.T. 9).

4. The bartender retrieved a 12 ounce bottle of beer and requested \$1.50 for the purchase. The officer gave him \$2.00 in currency, and the bartender returned \$.50 change (N.T. 9).

5. At 9:25 p.m. the officer finished his bottle of beer. He approached the bar and made contact with the bartender. He requested a second 12 ounce bottle of Miller Lite beer. The bartender retrieved the beer from the bar. He requested \$1.50 for the purchase. The officer gave him \$2.00. The bartender placed the money in a working cash register behind the bar and returned \$.50 (N.T. 10). The officer was not questioned with respect to membership prior to service of alcoholic beverages (N.T. 9-10).

6. On May 17, 2005, an officer of the Bureau arrived at the licensed premises where he entered and identified himself to the bartender, Cindy Brochios.

7. The officer was introduced to a trustee. The officer asked the trustee if he could see the catering records. A review of the catering records and conversation with the trustee disclosed that on the night of April 30, 2005 there was a ladies dart league held in a separate area of the licensed premises completely apart from the area where the officer had purchased alcoholic beverages. No one from the area where the catered event was held was permitted to enter the area where the officer had been served.

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since February 20, 1934, and has had four prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 89-0048. Fine \$800.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (punchboards and tickets).

Citation No. 93-0402. Fine \$450.00.

1. Sales after the catering club license expired on January 31, 1993 and had not been renewed.

Citation No. 95-0054. Fine \$600.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (machines, wheel, dice and sports pool).

Citation No. 03-1052. Fine \$1,500.00.

1. Sales to nonmembers. April 14 and 25, 2003.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines). April 25 and May 16, 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 \$50.00 or more than \$1,000.00 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 \$500.00.

ORDER

THEREFORE, it is hereby ordered that Licensee FRATERNAL ORDER OF EAGLES SUNBURY AERIE NO. 503, pay a fine of \$500.00 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 11th day of August, 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.