

Mailing Date: FEB 27 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1242
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-310658
v.	:	
	:	LID - 3301
HOME ASSOCIATION	:	
MIDDLETOWN POST 594	:	
137 E. HIGH ST.	:	
MIDDLETOWN, PA 17057-1905	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. CC-2507	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Ned E. Eppinger
Manager

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 (Bureau) against Home Association Middletown Post 594 (Licensee), License Number CC-2507.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on May 19, 2005, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated male patron.

Evidentiary hearings were conducted on December 15, 2005 and February 1, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its Manager, Mr. Ned E. Eppinger.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on May 3, 2005 and completed it on May 23, 2005. (N.T. 17-18)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on June 9, 2005. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 13)
3. On May 19, 2005, a Bureau Enforcement Officer entered the premises in an undercover capacity at 9:00 p.m. The Officer's attention was drawn to a customer sitting approximately twelve feet from him who was later identified as "Pete." The Officer's attention was initially drawn to Pete as he was very loud and very happy. His cheeks were bright red. Pete got up from the bar and walked over to the jukebox. As he got up, he took two or three steps forward, stopped and then take a step or two to the side before continuing on with another step. Every time he took one or two steps to the side, Pete stopped. He looked down at his feet. He was laughing. (N.T. 19-21)
4. The Officer observed Pete go to the jukebox two or three times during his stay. When Pete returned to his position at the bar, after going to the jukebox, he leaned heavily on to it. It seemed to the Officer Pete was supporting all of his weight by leaning on the bar. The Officer was engaged by the Post Commander in conversation during which Pete interjected. Pete blurted out things. Every time Pete said something, he slobbered. The Officer could not understand anything that Pete said. At one point, Pete yelled out the Officer's name and started again to laugh. (N.T. 22-24)

1. Commonwealth Exhibit No. C-3, N.T. 15.

5. Pete was drinking. At 9:45 p.m., he was served another twelve ounce can of beer by the barmaid. (N.T. 25-26)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

It was during Licensee's testimony that there was an acknowledgement that Pete had too much to drink somewhere between 10:00 p.m. to 10:30 p.m., as Pete arrived at the premises somewhere around 5:30 p.m. (N.T. 103), I find the Officer's assessment of the visibly intoxicated condition of Pete at the time of service to be supported by sufficient observation and will accord the Officer's opinion significant weight.

PRIOR RECORD:

Licensee has been licensed since October 16, 1961, and has had two prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication Nos. 88-1374 and 88-1724, Consolidated.

Fine \$500.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on your licensed premises.

Adjudication No. 89-0526. Fine \$750.00 and 7 days suspension.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on your licensed premises.

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.

Since this incident, Licensee has taken steps to comply with Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to Responsible Alcohol Management. I urge Licensee to take the final steps to become certified.

I impose a \$1,200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,200.00 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, Pennsylvania 17110-9661

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 21st day of February, 2006.

Felix Thau, A.L.J.

pm

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.