

Mailing Date: NOV 03 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1273
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-306081
	:	
MANAYUNK CLUB	:	
125 SANSOM WALKWAY	:	LID - 1138
PHILADELPHIA PA 19106-3014	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. C-1994	:	

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 June 29, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Manayunk Club, License Number C-1994 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, December 1, 2005, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 406(a)(1) of the Liquor Code, 47 P.S. Section 4-406(a)(1), in that on April 3 and May 1, 2005, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

FINDINGS OF FACT:

1. Officer Mullen is employed by the Bureau of Enforcement and was so employed in April of 2005. In April of 2005, he conducted an investigation of the licensed premises (N.T. 5).

2. During the early morning hours of Sunday, April 3, 2005, he visited the licensed premises at approximately 1:45 a.m. The officer was present based upon a complaint for sales to non-members. When the officer arrived at the premises, he noted that the licensed premises was in the basement of a parking garage (N.T. 6).

3. Upon approaching the door, the officer was carded and was asked to sign a clipboard. The officer showed him a fake identification card, which was issued by the Department of Transportation in the name of Edward Miller, it contained the officer's picture and verified his age (N.T. 7).

4. The officer signed a clipboard with the name Edward Miller (N.T. 7).

5. The officer entered the premises, paid a \$10.00 cover charge to a white non-Hispanic female. She took the money and stamped his hand (N.T. 8).

6. No one challenged the officer with regard to membership. However, the bartender asked him if he had a wristband. He responded that he did not have a wristband (N.T. 12-13).

7. The bartender pointed to a sign on the wall that all the members had to have a wristband in order to be served. Even though the officer responded that he did not have a wristband, the bartender served him a shot of Jack Daniels for which he paid \$8.00 (N.T. 13-14).

8. On Sunday, May 1, 2005 at approximately 1:40 a.m., the officer again went to the licensed premises. He was accompanied by Officer Burns (N.T. 14-15).

9. The officer was again required to show identification and this time he was asked to fill out an admission card. Officer Burns was also questioned with regard to membership and both showed identification. Both of the officers paid \$10.00 to enter the premises (N.T. 16).

10. After paying \$10.00, a white non-Hispanic female who was taking the money placed a star on the officer's wrist (N.T. 15-16).

11. Two officers went to the back bar where there was a bartender on duty. There were approximately forty-five patrons on the premises (N.T. 16-17).

12. The officer went to the female bartender and ordered two Miller Lite beers, which he paid for with a twenty-dollar bill. He handed it to another individual sitting at the end of the bar. He then handed the money back to her and she placed it in the cash register (N.T. 17).

13. The individual was on the left side of the officer on the patron's side of the bar. Beers were five dollars each and the female bartender gave him change (N.T. 17-18).

14. Later in the evening, the officer purchased another drink from the same female bartender and she gave the money to the gentleman seated to the left of the officer. He handed it back to her and she put the cash in the cash register and gave the officer change (N.T. 18-19).

15. Officer Burns purchased a drink for himself and the same procedure was used in that the money was first handed to the gentleman seated on the patron's side of the bar and gave it back to the bartender and placed in the cash register (N.T. 19).

16. The officer questioned the female bartender as to why she was handing the money to the gentleman. She explained that it was a "loophole" in that technically the gentleman at the bar was buying the drinks (N.T. 20).

17. The officer was not wearing a wristband, but other individuals were wearing wristbands (N.T. 20).

18. Again the officer saw a sign indicating that you could only purchase alcoholic beverages if you were wearing a wristband. The officer saw two of these signs behind the bar (N.T. 20-21)

19. The officer was not a member on April 3, 2005 or May 1, 2005 when he purchased alcoholic beverages at the premises (N.T. 21).

20. The officer used a fictitious name when he presented his identification card from Penndot. The officer used the name of Edward B. Miller and signed the sheet of paper with the name Edward B. Miller. The officer paid an admission fee. During the course of the investigation, he could not request membership records (N.T. 23).

21. The officer did not recall what fictitious name was used by Officer Burns (N.T. 23-24).

22. On May 1, 2005, the doorperson asked for identification and membership cards. Officer Mullen showed the individual his identification card (N.T. 25).

CONCLUSIONS OF LAW:

On April 3 and May 1, 2005, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code, 47 P.S. Section 4-406(a)(1).

PRIOR RECORD:

Licensee has been licensed since May 2, 1934, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has had a record of prior violations as follows:

Citation No. 93-0020. \$300.00 fine.

1. Sales to nonmembers.

Citation No. 95-1047. Three days suspension.

1. Sales to nonmembers.
2. Sales between 3:00 a.m. and 7:00 a.m.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
5. Improper admission of members.

Citation No. 95-2474. \$2,000.00 fine and three days suspension.

1. Sales between 3:00 a.m. and 7:00 a.m.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.

Citation No. 98-1913. \$1,800.00 fine and four days suspension.

1. Improper admission of members.
2. Sales to nonmembers.
3. Sales between 3:00 a.m. and 7:00 a.m.
4. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
5. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.
6. Sales to a visibly intoxicated person.
7. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
8. Sales to minors.

Citation No. 04-1714. \$3,000.00 fine.

1. Served an unlimited or indefinite amount of alcoholic beverages for a fixed price.
February 28 and March 27, 2004.
2. Sales to nonmembers.
February 28, 2004.
3. Used loudspeakers or devices whereby music could be heard outside.
May 23, July 17 and August 14, 2004.
4. Noisy and/or disorderly operation.
May 23, June 19, July 17 and August 14, 2004.
5. Improper admission of members.
March 27, 2004.

DISCUSSION:

Attorney for the Licensee argued that the Bureau did not meet its burden in that it did not establish that the person who was served was actually a nonmember. In that the officer used a fake identification, Counsel indicated that he should have established that Edward B. Miller was not a member of the club and that the citation be dismissed.

The Bureau responded that there was no indication that anyone believed that the officers were members of the club nor did the officers represent themselves to be members of the club. The officers showed identification but did not show any membership cards. They were allowed to enter the premises and were allowed to consume alcoholic beverages.

This Court is not satisfied with the procedure used on May 1, 2005, whereby a member of the club is handed the money and thus technically purchases the alcoholic beverages. Patrons were wearing armbands to identify those who could purchase alcoholic beverages. Clearly sales were made to nonmembers of the club. No one at the club appeared to be sponsoring them, knew them or invited them as their guests; they should not have been served alcoholic beverages. It was not necessary, in this instance, for the officer to determine that there was no club member by the name of Edward B. Miller because clearly the doorman did not believe Edward B. Miller to be a member nor did he identify himself as a member. Nor was he wearing an armband, which would indicate that he was a member.

The Licensee has had a number of violations, several include sales to nonmembers. The most recent violation was in 2004. Under the circumstances, a \$600.00 penalty shall be imposed.

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.

Manayunk Club
Citation No. 05-1273

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Manayunk Club, License Number C-1994, pay a fine of Six Hundred Dollars (\$600.00) 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 23rd day of October, 2006.

Tania E. Wright, J.

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.

mm