

Mailing Date: JUL 31 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1383
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-310706
	:	
LEGACY INC.	:	
T/A KNIGHT'S TAVERN	:	LID - 9816
KNIGHTS RD. SHOPPING CTR.	:	
WOODHAVEN & KNIGHTS RDS.	:	
PHILADELPHIA PA 19154	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-1163	:	

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 July 11, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Legacy, Inc., t/a Knight's Tavern, License Number R-AP-SS-1163 (hereinafter "Licensee").

Legacy, Inc.
t/a Knight's Tavern
Citation No. 05-1383

An Administrative hearing was held on Tuesday, August 8, 2006, 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 Sections 401(a) and 407 of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-407, in that on May 28, 2005, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

FINDINGS OF FACT:

1. Officer Steven Rowe is employed by the State Police and was so employed on May 28, 2005 when he conducted in an investigation of the licensed premises. Officer Rowe arrived at the premises at approximately 9:00 p.m. (N.T. 6).

2. The officer made a total of four visits to the premises, this being his second. He noted that the premise was located in a shopping center off Knights Road. When he entered the premises, he walked into a small corridor, which opened into a bar. The bar was situated cattycorner to the left hand side (N.T. 7).

3. While on the premises, the officer ordered a Budweiser beer. He noted that there were approximately twenty patrons on the premises and two bartenders. The officer remained on the premises for approximately an hour and a half (N.T. 8-9).

4. While on the premises, the officer noted that there was a group of five individuals, one of whom went to the bar and ordered six packs of Miller Light beer to go (N.T. 9-10).

5. The bartender went to the six-pack cooler and grabbed five six packs of Miller Light bottled beer and put them in brown paper bags and brought them over to the bar and set them in front of the patron on the bar. There was an exchange of currency between the bartender and the individual that ordered (N.T. 10-11).

6. The bartender put the money in a cash register. The officer did not see the bartender give the patron a receipt (N.T. 11).

7. The patron handed two of the brown paper bags to an individual standing behind him and he took three of the bags (N.T. 12).

8. No other member of the group appeared to be paying for the beer (N.T. 12).

9. The officer saw the sale rung up on the cash register, but never requested a sales receipt for the transaction (N.T. 16).

Legacy, Inc.
t/a Knight's Tavern
Citation No. 05-1383

10. The individuals in the group gathered around the register at the time the transaction was taking place (N.T. 17-18).

11. The officer saw the individual who ordered, reach into his pocket and remove the money to pay the bartender. He did not see any exchange of money between the patron and any other of the individuals who were standing around (N.T. 18-19).

12. The transaction involved approximately 360 ounces of beer (N.T. 21).

13. Eleanor Driscoll is the owner and president of the licensed premises (N.T. 23-24).

14. Ms. Driscoll indicated that the cash register is located in the center of the bar and not attached to the bar (N.T. 25).

15. Ms. Driscoll is RAMP trained (N.T. 26-27 and Exhibit L-1).

16. Ms. Driscoll is the president of the Philadelphia Tavern Association and has been the president for three years (N.T. 30).

17. Ms. Driscoll indicated that she has a policy against selling malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person (N.T. 31).

CONCLUSIONS OF LAW:

On May 28, 2005, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises, in violation of Sections 401(a) and 407 of the Liquor Code, 47 P.S. Sections 4-401(a) and 4-407.

PRIOR RECORD:

Licensee has been licensed since February 23, 1988, and has a record of prior violations as follows:

Citation No. 93-2648. \$400.00 fine.

1. Sales to a visibly intoxicated person.

Citation No. 97-0595. \$1,000.00 fine.

1. Sales to minors.
2. Minor frequenting.

Citation No. 01-0949. \$700.00 fine.

1. Sales to visibly intoxicated persons.
April 26, 2001.

Legacy, Inc.
t/a Knight's Tavern
Citation No. 05-1383

DISCUSSION:

The officer testified credibly that while on the premises, he saw an individual purchase five six packs of Miller Light beer in a single sale. The Bureau made four visits to the premises and this was the only violation noted. In reviewing the prior record, it is noted that the Licensee had three prior violations, but none since 2001.

Under the circumstances, a \$150.00 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.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Legacy, Inc., t/a Knight's Tavern, License Number R-AP-SS-1163, pay a fine of One Hundred Fifty Dollars (\$150.00) 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 25th day of July, 2007.

Tania E. Wright, J.

Legacy, Inc.
t/a Knight's Tavern
Citation No. 05-1383

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