

Mailing Date: NOV 09 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1583
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-307829
v.	:	
	:	LID - 43572
CHUCK'S SPORTS BAR, INC.	:	
T/A RUSSELL'S TAVERN	:	
537 S. MARKET STREET	:	
SELINGROVE, PA 17870-1819	:	
	:	
	:	
SNYDER COUNTY	:	
LICENSE NO. R-AP-SS-18940	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
Gregory A. Stuck, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 11, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CHUCK'S SPORTS BAR, INC., License Number R-AP-SS-18940 (hereinafter "Licensee").

The citation contains four counts.

The first count charges Licensee with violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(3) and 4-493(16)] in that on June 19, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on June 19, 2005, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on June 19, 2005, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fourth count charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2) and 4-493(16)] in that during the period June 20 through 24, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when its Restaurant Liquor License was suspended at Citation No. 04-1663.

The investigation which gave rise to the citation began on March 12, 2005 and was completed on June 27, 2005; and notice of the violation was sent to Licensee by Certified Mail on July 18, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 12, 2006 in the PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania.

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:

COUNTS 1, 2 AND 3

1. On Sunday, June 19, 2005 at 1:15 a.m. an officer of the Bureau entered the licensed premises (N.T. 10).
2. At 2:01 a.m. the officer attempted to order another drink but was refused by the bartender (N.T. 12).
3. At 2:28 a.m. the bartender took three large, transparent glasses and filled them with ice. She then poured two shots of vodka in each glass. The bartender then took two cans of a nonalcoholic drink called Red Bull, and put some of that in each glass. One of the patrons gave the bartender money, which she put near the cash register. Three patrons then took their drinks (N.T. 12-13).

4. At 2:40 a.m. the officer departed the licensed premises with seventeen patrons remaining (N.T. 13).

5. The officer maintained outside surveillance of the licensed premises until 2:55 a.m. and observed no one leave during that time (N.T. 14).

COUNT 4

6. On May 10, 2005, pursuant to an executed Waiver of hearing, Admission of violation and Authorization to enter a penalty at Citation No. 04-1663, this office issued an order imposing a suspension of Licensee's restaurant liquor license for a period of four days beginning at 7:00 a.m. on June 20, 2005 and ending at 7:00 a.m. on June 24, 2005 (N.T. L-1 and administrative notice).

7. Licensee did not receive notice of the suspension from its attorney, and did not close during the suspension period (N.T. 86-88 and Exhibit L-1).

CONCLUSIONS OF LAW:

Counts 1, 2, 3 and 4 of the citation are **sustained**.

DISCUSSION:

COUNTS 1, 2 AND 3

The testimony of the officer in this case clearly establishes that three patrons were served alcoholic beverages consisting of vodka and a drink known as "Red Bull" at 2:28 a.m. on the morning of June 19, 2005 (See Finding No. 3). Similarly the officer left the premises at 2:40 a.m. with seventeen patrons remaining including the three served the vodka drinks twelve minutes before.

Licensee presented testimony of several witnesses indicating that the premises had closed on time; however, each of the several witnesses who testified remembered the incident occurring during "speedweek" at the nearby raceway. The Bureau entered a schedule from the raceway indicating that "speedweek" started on July 3, 2005 after the events in question. Clearly, although each of these witnesses were attempting to testify truthfully and in a forthright manner, they were mistaken as to the date (See Exhibit C-4).

The Bureau has met its burden and Counts 1, 2 and 3 of the citation are sustained.

COUNT 4

This violation occurred as the result of an all too human mistake by counsel for Licensee. Counsel for Licensee honestly and admirably admitted the mistake which caused Licensee to be open during the period of suspension. Count 4 is, also sustained.

PRIOR RECORD:

Licensee has been licensed since March 8, 1999, and has had two prior violations:

Citation No. 00-0688. Fine \$1,000.00.

1. Sales to a minor. March 10, 2000.

Citation No. 04-1663. 4 days suspension.

1. Sales to a visibly intoxicated person. April 22, 2004.

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 Counts 1 and 4 of this case.

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 Counts 2 and 3 of this case.

Counts 2 and 3 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 1 – 3 days suspension
- Counts 2 and 3 merged – 2 days suspension
- Count 4 – 4 days suspension

ORDER

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license of CHUCK'S SPORTS BAR, INC., License No. R-AP-SS-18940 be suspended for a period of nine days **BEGINNING** at 7:00 a.m. on Monday, January 8, 2007 and **ENDING** at 7:00 a.m. on Wednesday, January 17, 2007.

Licensee is directed on January 8, 2007 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on January 17, 2007 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 18th day of October, 2006.

Daniel T. Flaherty, Jr., J.

an

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.