

Mailing Date: JUL 31 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1680
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-313468
v.	:	
	:	LID - 36878
IAN & ROBBY, INC.	:	
T/A WHITE OAK INN	:	
6400 SPRING RD.	:	
SHERMANS DALE, PA 17090-9712	:	
	:	
	:	
PERRY COUNTY	:	
LICENSE NO. H-AP-2746	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
Joseph D. Buckley, Esquire  
1237 Holly Pike  
Carlisle, PA 17013

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 25, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Ian & Robby, Inc., t/a White Oak Inn (Licensee), License Number H-AP-2746.

The citation charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on July 16, 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.

An evidentiary hearing was conducted on June 13, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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 June 23, 2005 and completed it on July 31, 2005. (N.T. 9)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on August 4, 2005. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)
3. A Bureau Enforcement Officer entered the premises on Saturday, July 16, 2005, in an undercover capacity. The Officer arrived at about 8:10 p.m. (N.T. 8-10)
4. The Officer sat at the bar. Her attention was immediately drawn to a customer who was behaving in a manner consistent with one who is visibly intoxicated. (N.T. 12-18)
5. The visibly intoxicated patron was recognized as such by bar staff. There was an attempt by the staff to provide food to the visibly intoxicated patron but he refused that service. The staff further attempted to keep the visibly intoxicated patron on the premises so that he would not attempt to drive in a visibly intoxicated condition. (N.T. 65-75)

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1. Commonwealth Exhibit No. C-2, N.T. 6.

6. An employe, who had earlier prepared mixed drinks in shot glasses, was circulating in the premises providing shots of mixed drinks to customers. She asked the visibly intoxicated patron if he would care for a shot. She noticed his visibly intoxicated condition and then advised him that she did not think he needed another alcoholic beverage. The employe suggested to the visibly intoxicated patron that he drink his soda. She refused the visibly intoxicated patron any service of alcoholic beverages. As she began to move to another customer, the visibly intoxicated patron took a shot glass from the tray and drank the contents immediately. The employe reported the incident to her superior, having been concerned not only about the drunken condition of the customer but that she received no money for the drink. (N.T. 77-80).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The Bureau has **failed** to prove that 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.

DISCUSSION:

There is very little that is inconsistent between the version of the events as testified to by the Enforcement Officer and by Licensee's witnesses. The critical element is whether or not the barmaid gave the visibly intoxicated patron an alcoholic beverage as testified to by the Enforcement Officer or whether the visibly intoxicated patron, unilaterally and without approval, took a drink on his own accord.

I have no doubt concerning the truthfulness of all who testified. I simply conclude the Officer was mistaken as to what she saw. First, the Officer did not hear the conversation between the visibly intoxicated patron and the barmaid, although she did conclude that one had occurred (N.T. 37-38). The Officer further testified that the visibly intoxicated patron partially blocked her view (N.T. 40-41). Given these circumstances, it is my firm conviction the Officer misinterpreted what she saw.

The facts of this case fall squarely within the Commonwealth's Court decision in *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. J.E.K. Enterprises, Inc.*, 680 A.2d 53 (Pa.Cmwlt. 1996) and the Pennsylvania Liquor Control Board's decision in *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Central Pennsylvania Hospitality, Inc.*, Adjudication No. 02-0175 (December 18, 2002).

ORDER:

NOW THEREFORE, it is ordered that Citation No. 05-1680, issued against Ian & Robby, Inc., t/a White Oak Inn, License No. H-AP-2746, is DISMISSED.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 19<sup>th</sup> day of July, 2006.

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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.**