

Mailing Date: APR 11 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1739
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-302355
v.	:	
	:	LID - 1999
MAPLE VIEW LODGE NO 780	:	
I B P O E OF W	:	
168 CEMETERY STREET	:	
ELIZABETH PA 15037-1502	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. C-4359	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Richard Parker, Esquire

For Licensee
Herman Ramseur,
Manager/Steward

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 9, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Maple View Lodge No. 780, I.B.P.O.E. of W., License Number C-4359 (hereinafter Licensee).

MAPLE VIEW LODGE NO. 780
I.B.P.O.E. OF W.
Citation Number 05-1739

The citation contains four counts.

The first count charges Licensee with violation of Section 406(a)(1) of the Liquor Code [47 P.S. §4-406(a)(1)], in that on July 16, 2005, Licensee, by its servants, agents or employees, sold alcoholic beverages to nonmembers.

The second count charges Licensee with violation of Sections 406(a)(4) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(4) and 4-493(16)], in that on July 16, 2005, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on February 6, 2005 and July 16, 2005, Licensee, by its servants, agents or employees, 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 fourth count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on July 16, 2005, Licensee by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m.

An administrative hearing was conducted on February 14, 2006, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Richard Parker, Esquire. Licensee's Manager/Steward Herman Ramseur, appeared on behalf of Licensee.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on December 7, 2004, and completed its investigation on July 16, 2005. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated August 12, 2005, which was sent by certified mail and received by Licensee on August 15, 2005. (Exhibit C-2)
3. The citation was issued on September 9, 2005, and was sent by certified mail and received by Licensee on September 12, 2005. (Exhibits C-3, C-4)

COUNT 3

4. On February 6, 2005 at 3:20 a.m., Liquor Enforcement Officer T. J. Flood approached Licensee's premises and noted that approximately ten to 15 vehicles remained in the parking lot. (N.T. 9)

5. Officer Flood exited her vehicle and entered the foyer area of Licensee's club where she observed two individuals enter the premises. (N.T. 9-16)

6. Upon attempting to open the door entering the barroom area, Officer Flood noted that it was locked. At this time, an unidentified male opened the door from inside the premises and advised Officer Flood that the bartender was not permitting anyone else to enter the club. Officer Flood then inquired about the two individuals who had just entered, and was advised by this unidentified male that they were the last two that would be permitted to enter. While conversing with this male, Officer Flood noted that there were several individuals inside the premises. (N.T. 9-16)

7. Officer Flood then returned to her vehicle where she commenced an outside surveillance and noted that no one had departed Licensee's premises from shortly after 3:20 a.m. until 3:45 a.m., at which time she departed the area. (N.T. 10-16)

COUNTS 1, 2, 3 AND 4

8. On July 16, 2005 at 1:55 a.m., Liquor Enforcement Officers T. J. Flood and H. L. Micklos-Hayes entered the foyer area of Licensee's premises at which time a light turned on and an unidentified male opened the door and permitted them to enter the barroom area of the club. (N.T. 16-17, 25)

9. Upon entering, the Enforcement officers observed a female bartender heard to be called "Pam" rendering service of alcoholic beverages to approximately ten patrons. (N.T. 17)

10. At 2:10 a.m., Officer Flood ordered a 12-oz. bottle of Coors Light beer for herself and a 12-oz. bottle of Michelob Ultra beer for Officer Micklos-Hayes. These bottles of beer were paid for by an unidentified patron. (N.T. 17-18, 25)

11. At 2:55 a.m., and again at 3:10 a.m., Officer Flood purchased a 12-oz. bottle of Michelob Ultra beer for Officer Micklos-Hayes, paying bartender "Pam" \$2.00 for each purchase. On each occasion, Officer Flood noted that bartender "Pam" utilized the cash register to record these transactions. (N.T. 18-21, 25-26)

12. At 3:35 a.m., Officer Micklos-Hayes purchased another 12-oz. bottle of Michelob Ultra beer from bartender "Pam" for \$2.00, which transaction was again recorded on the cash register. (N.T. 20-21, 25-26)

13. Officer Flood and Officer Micklos-Hayes observed the service of alcoholic beverages continue between the hours of 3:00 a.m. and 3:45 a.m. Officer Flood further noted that patrons were permitted to enter Licensee's club after 3:30 a.m. (N.T. 21-22, 27)

13. Officer Flood and Officer Micklos-Hayes departed Licensee's premises at 3:45 a.m., with the service of alcoholic beverages continuing to approximately 35 to 40 patrons. (N.T. 22, 26-27)

15. During the course of this visit, Officer Flood and Officer Micklos-Hayes were never questioned relative to membership in Licensee's club. (N.T. 23, 26)

16. Officer Flood and Officer Micklos-Hayes have never been members of Licensee's club or any of its affiliated organizations. (N.T. 21, 26)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged in counts one through four of this citation by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On July 16, 2005, Licensee, by its servants, agents or employees, sold alcoholic beverages to nonmembers, in violation of Section 406(a)(1) of the Liquor Code.

3. On July 16, 2005, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages between 3:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(4) and 493(16) of the Liquor Code.

4. On February 6 and July 16, 2005, Licensee, by its servants, agents or employees, 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, in violation of Section 499(a) of the Liquor Code.

5. On July 16, 2005, Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 3:30 a.m., in violation of Section 499(a) of the Liquor Code.

MAPLE VIEW LODGE NO. 780
I.B.P.O.E. OF W.
Citation Number 05-1739

PRIOR RECORD:

Licensee has been licensed since March 20, 1946, and has had five prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 89-2417. Fine \$350.00.

1. Sales to nonmembers.

Citation No. 93-1350. Fine \$400.00.

1. Sales to nonmembers.
2. Improper admission of members.

Citation No. 95-2896. Fine \$300.00.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years.
2. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
3. Failed to notify the board within 15 days of a change of officers, directors and/or stockholders.

Citation No. 97-1754. Fine \$450.00 and one day suspension.

1. Illegal gambling (machines).

Citation No. 99-0005. One day suspension.

1. Sales to nonmembers.

PENALTY:

Relative to counts one, three and four of this citation, 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 these types. As to count two, Section 471 of the Liquor Code 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 a violation of this type.

Licensee is placed on notice that the operation of its licensed premises as an "open saloon" shall not be tolerated.

MAPLE VIEW LODGE NO. 780
I.B.P.O.E. OF W.
Citation Number 05-1739

For the foregoing reasons, the following penalties shall be imposed:

Count one - \$400.00.

Count two - \$1,500.00.

Count three - \$300.00.

Count four - \$300.00.

ORDER:

THEREFORE, it is hereby ordered that Maple View Lodge No. 780, I.B.P.O.E. of W., License Number C-4359, pay a fine of \$2,500.00 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 PA 17110-9661

Jurisdiction is retained to ensure compliance with this Order.

Dated this 5th day of April, 2006.

Roderick Frisk, J.

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NOTE: 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.

