

Mailing Date: AUG 25 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1972
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-317403
v.	:	
	:	LID - 6156
PATRICK J. MCGONAGLE	:	
BARBARA A. MCGONAGLE	:	
T/A AMERICAN HOTEL	:	
KRESGEVILLE, PA 18333	:	
	:	
	:	
MONROE COUNTY	:	
LICENSE NO. H-AP-SS-858	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig Strong, Esquire

For Licensee
Patrick McGonagle, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 30, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PATRICK J. MCGONAGLE & BARBARA A. MCGONAGLE, License Number H-AP-SS-858 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(28) of the Liquor Code [47 P.S. §4-493(28)] in that on August 28, 2005, Co-Licensee, Patrick J. McGonagle consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

The investigation which gave rise to the citation began on August 28, 2005 and was completed on August 29, 2005; and notice of the violation was sent to Licensee by Certified Mail on September 7, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 22, 2006 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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:

1. On August 28, 2005 two officers of the Bureau entered the licensed premises at 4:40 p.m. (N.T. 9-10).

2. Upon entry the officers observed co-licensee Patrick McGonagle tending bar and rendering service to six adult patrons (N.T. 10).

3. The officers observed Mr. McGonagle drinking from a glass which he kept under the bar (N.T. 10 and 14).

4. The officers observed Mr. McGonagle take the glass, fill it with beer from a tap located behind the bar. The tap was clearly labeled "Budweiser beer." He then retreated into the kitchen with the glass and reemerged periodically tending bar and serving patrons in and around the bar area (N.T. 10).

5. At 5:02 p.m. Mr. McGonagle refilled the glass from the tap system with Budweiser beer and then went to the kitchen area. He was followed by one of the officers back to the kitchen area. Mr. McGonagle was observed consuming beer in the kitchen from the glass (N.T. 10 and 15).

6. At 5:20 p.m. Mr. McGonagle again filled the glass with Budweiser beer from the tap system and went to the kitchen area at which point he was followed by the other officer toward the kitchen area. The officer observed Mr. McGonagle through the kitchen doors consuming beer from the glass (N.T. 10-11).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since September 22, 1976, and has had three prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 95-3044. Fine \$150.00.

1. Your co-licensee Patrick J. McGonagle consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.

Citation No. 97-2416. Fine \$50.00.

1. Issued worthless checks in payment for malt or brewed beverages.

Citation No. 04-2136. Fine \$300.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (block pools). November 9, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee PATRICK J MCGONAGLE & BARBARA A. MCGONAGLE, pay a fine of \$250.00 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 or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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 pending final resolution of the penalty in this matter.

Dated this 14th day of August, 2006.

Daniel T. Flaherty, Jr., J.

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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.