

Mailing Date: JUN 16 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2572
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-317726
v.	:	
	:	LID - 33525
NEIL S. BLASKO, JR.	:	
T/A BLASKO'S CAFE	:	
RR3 BOX 3205, RTE 93	:	
HAZLETON, PA 18202-9748	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-13189	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Pasco L. Schiavo, Esquire
199 North Church Street
1 Columbus Place
Hazleton, PA 18201-5874

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 16, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Neil S. Blasko, Jr., t/a Blasko's Cafe (Licensee), License Number R-AP-SS-13189.

This citation¹ contains ten counts.

The first count charges Licensee with violations of Section 3.52(b) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §3.52(b)]. The charge is that on October 8 and 11, 2005, Licensee's licensed premises had an inside passage or communication to or with another business conducted by the Licensee without Board approval.

The second count charges Licensee with violations of Section 493(28) of the Liquor Code [47 P.S. §4-493(28)]. The charge is that on September 25 and October 8, 2005, Licensee, Neil S. Blasko, Jr. consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

The third count charges Licensee with a violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(2) and §4-493(16)]. The charge is that on October 8, 2005, Licensee, by servants, agents or employees, sold, furnished and/or gave alcoholic beverages between 2:00 A.M. and 7:00 A.M.

The fourth count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on October 8, 2005, Licensee, by 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 fifth count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on October 8, 2005, Licensee, by 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 2:30 A.M.

The sixth count charges Licensee with a violation of Sections 401(a) and 407 of the Liquor Code [47 P.S. §4-401(a) and §4-407]. The charge is that on October 8, 2005, Licensee, by servants, agents or employees, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

The seventh count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on October 8, 2005, Licensee, by servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age.

The eighth count charges Licensee with violations of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)]. The charge is that on October 8, 2005 and divers other occasions in the past year, Licensee, by servants, agents or employees, permitted one (1) male minor and one (1) female minor, twenty (20) years of age to frequent his licensed premises.

The ninth count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on October 8, 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.

The tenth count charges Licensee with a violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(3) and §4-493(16)]. The charge is that on September 25, 2005, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 A.M. and 11:00 A.M.

An evidentiary hearing was conducted on May 4, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, 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 September 2, 2005 and completed it on October 25, 2005. (N.T. 66)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 21, 2005, as amended. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-2, N.T. 64)

Count No. 1:

3. On October 8, 2005, several Bureau Enforcement Officers were conducting an open inspection for minors at a licensed facility located adjacent to the subject licensed premises. The adjacent facility is that of Comet Oil Co., Inc., t/a Comet Food Mart, License No. E-SS-5248. There was a door that connected to the subject licensed premises to that of Comet Oil Co., Inc. The Officer returned on October 11, 2005, again finding the same interior connection. (N.T. 12-18)

2. Commonwealth Exhibit No. C-2, N.T. 64.

Count Nos. 2 and 10:

4. On September 25, 2005, an undercover Bureau Enforcement Officer entered the premises at about ten minutes after midnight. Tending bar and rendering service to approximately 30 to 35 patrons was the Licensee along with two additional servers. At approximately 1:07 a.m., Licensee poured himself a shot of liquor. He consumed the shot while he was tending bar. He poured himself a plastic cup of beer. At 1:30 a.m., Licensee poured himself another shot of liquor and consumed it while tending bar. At 2:00 a.m., there were approximately twenty patrons present in possession of and consuming alcoholic beverages. At 2:20 a.m., the Officer requested a six pack of beer from a barmaid. The barmaid asked Licensee whether it was "all right." Licensee responded in the affirmative. Licensee served the Officer a six pack of beer. Licensee rang the sale on the cash register, placing the amount tendered by the Officer inside and handed the Officer the six pack of beer. (N.T. 67-69)

5. The Officer departed the premises at 2:25 a.m. with three patrons remaining and in possession of and consuming alcoholic beverages. The Officer departed at that time. All remaining patrons departed by 2:30 a.m. (N.T. 67-69)

6. The Officer returned to the premises in an undercover capacity on October 8, 2005 at 1:30 a.m. Licensee was tending bar. While doing so he was in possession of and consuming beer. At 1:40 a.m., Licensee poured a shot of liquor and consumed it while tending bar. (N.T. 72-73)

Count No. 3:

7. At 2:20 a.m., October 8, 2005, an undercover Bureau Enforcement Officer ordered and was served a six pack of beer to go. (N.T. 75)

Count Nos. 4 and 5:

8. The undercover Officer remained on the premises after 2:30 a.m., October 8, 2005, at which time there were five patrons on the premises in possession and consuming alcoholic beverages. The Officer departed at 2:40 a.m., with four patrons possessing and consuming alcoholic beverages. (N.T. 75)

Count No. 6:

9. On October 8, 2005, at 1:50 a.m., a patron ordered a case of beer, twenty-four, twelve ounce bottles (totaling 288 fluid ounces). Licensee sold the patron the case of beer. After the sale was recorded on the cash register, the patron inquired if he could have the case when he departed. The patron departed at 2:15 a.m. at which time Licensee handed the patron the case of beer which was earlier sold. (N.T. 72-73)

Count No. 7:

10. On October 8, 2005, at 11:10 p.m., a detail of Bureau Enforcement Officers entered the premises to conduct an administrative inspection for minors. The detail discovered two minors on the premises. (N.T. 81-82)

11. One of the minors was born on March 27, 1985 and was twenty years old on October 8, 2005. He purchased about three beers which he ordered at the bar. He was served by a barmaid. When he first entered the premises, he was asked for proof of age and for identification. The minor responded that he had no identification. He was nevertheless permitted to enter and be served. (N.T. 99-105)

Count No. 8:

12. The second minor was born March 29, 1985. She was twenty years old on October 8, 2005. She came to the premises with friends arriving somewhere between 11:00 p.m. and 12:00 p.m. She had no alcoholic beverages. She had been to the premises on approximately ten prior visits in the immediate seven months preceding October 8, 2005. She was never questioned as to age. Of her ten visits, she drank alcoholic beverages on four of those occasions. On one of the ten occasions, the young lady was accompanied by her mother. (N.T. 116-122)

Count No. 9:

13. The Officer returned to the premises at 10:05 p.m., October 8, 2005. He noticed a patron who displayed slurred speech and a staggering, unsteady gait. There appeared to be a large urine stain in the front of his pants. The patron was very loud and rude to the barmaid. At 10:40 p.m., while in this condition, the patron ordered and was served a twelve ounce bottle of beer by Licensee. At 10:45 p.m., the Officer departed to meet a prearranged detail for purposes of conducting an open inspection of the premises for minors. (N.T. 76-77)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 are **sustained** as charged.

DISCUSSION:

The interior connection, now sealed by Licensee, between the two licensed premises was not approved by the Pennsylvania Liquor Control Board, as evidenced by the investigative report (Judge's Exhibit No. J-1, N.T. 25).

I heard Licensee testify but find him hopelessly incredible

PRIOR RECORD:

Licensee has been licensed since March 2, 1994, and has had no prior violations.

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 Count Nos. 1, 2, 4, 5, 6, and 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 Count Nos. 3, 7, 8, 9 and 10 in this case.

I impose:

- Count No. 1 – \$200.00 fine.
- Count No. 2 – \$700.00 fine.
- Count Nos. 3 and 10 – \$1,300.00 fine.
- Count Nos. 4 and 5 – merged - \$500.00 fine.
- Count No. 6 – \$200.00 fine.
- Count No. 7 – \$1,200.00 fine and RAMP.
- Count No. 8 – \$1,000.00 fine.
- Count No. 9 – \$1,200.00 fine.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$6,300.00 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, Pennsylvania 17110-9661

RAMP Requirements

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management in the following manner. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification was issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 7th day of June, 2006.

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.