

Mailing Date: SEP 26 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-2748
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-315634
v.	:	
	:	LID - 51804
KAREN L. LESHER	:	
T/A THOROUGHBREDS	:	
10104 JONESTOWN ROAD	:	
GRANTVILLE, PA 17028-8243	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. R-AP-SS-16765	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Karen L. Leshner, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 5, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against KAREN L. LESHER, License Number R-AP-SS-16765 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on November 10, 2005, Licensee, by her servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The investigation which gave rise to the citation began on August 1, 2005 and was completed on November 21, 2005; and notice of the violation was sent to Licensee by Certified Mail on December 7, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 6, 2006 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 November 10, 2005 at 8:10 p.m., an officer of the Bureau entered the licensed premises (N.T. 11).

2. Upon entry the officer noticed a male patron whose speech was extremely slurred. He had trouble walking and staggered whenever he walked (N.T. 11, 15-16).

3. The aforementioned patron was having a conversation with another male patron named Klepper about the upcoming Penn State football game. They were arguing back and forth concerning the game (N.T. 12).

4. At one point a female patron who was seated in between this patron and Mr. Klepper got up and went around to the other side of the bar leaving the patron and Klepper seated at the bar. At this point, the officer observed that the patron was swaying back and forth and noticed that his eyes were bloodshot (N.T. 12).

5. At 8:35 p.m. a bartender came over and took the patron's empty glass and filled it with Coors Light beer. She set it in front of the patron and collected money (N.T. 12).

6. At one point Mr. Klepper went to the restroom. While he was gone the patron in question swayed back and forth and appeared to be extremely intoxicated (N.T. 12). When Mr. Klepper came back from the restroom, he approached the aforementioned patron and the patron got up and he and Mr. Klepper were grabbing at each other. At this point Mr. Klepper said, "Do you see what he's doing he's after me." The bartender said, "Yeah, I'm watching you. I'm keeping an eye on you." (N.T. 12-13).

7. When the two patrons sat back down, the patron in question sat in the wrong spot. He sat where the female patron had previously been sitting. He didn't realize it, and he sat there and drank her beer. The female patron came back and the aforementioned patron moved down to his correct seat and again drank his own beer (N.T. 13).

8. At 8:50 p.m. the bartender came over again took the patron's glass and filled it with Coors Light beer. He brought it back and took money from the patron (N.T. 13). The aforementioned patron started to converse with the officer. He talked about many different things. He was extremely hard to understand because his speech was slurred. At one point he was talking about Franklin Roosevelt, Abraham Lincoln and another time he was talking about Archimedes. The officer had no idea what the point of the conversation was (N.T. 13-14).

9. The patron took out a cigarette. He sat there a long time trying to figure out which end to put in his mouth. He played around with the cigarette for quite a while confused as to which end he should put into his mouth. When he attempted to light the cigarette, he set fire to the middle of the cigarette. He then put it out and finished his beer (N.T. 14).

10. At 9:05 p.m. the bartender came over and noticed that the patron's glass was empty. She filled it with Coors Light beer, brought it back, set it down and took money again from the patron (N.T. 14).

11. At one point the patron decided to go to the restroom. On the way to the restroom he was bouncing off the wall and into patrons as he made his way. On his way back, he again bounced off the wall. He could not walk in a straight line, and he bounced off the wall and into patrons and used the patrons for his balance (N.T. 14-15).

12. When the patron got back from the restroom he finished his beer, and at 9:15 p.m. the bartender served him a fourth Coors Light beer (N.T. 15).

CONCLUSION OF LAW:

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

DISCUSSION:

The record in this case clearly establishes that a patron who exhibited clear signs of intoxication was served alcoholic beverages four times while in that state. Clearly the record establishes a violation.

PRIOR RECORD:

Licensee has been licensed since December 26, 2003, and has had one prior violation:

Citation No. 05-1591. Three days suspension.

1. Sales to visibly intoxicated persons. July 4, 2005.

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 this case.

Although Licensee was certified by the Pennsylvania Liquor Control Board to be in compliance with the provisions of Liquor Code Section 471.1 [47 P.S. §4-471.1] relating to Responsible Alcohol Management, because Licensee has violated Liquor Code Section 493(1) relating to sales to visibly intoxicated persons within a four year period of the date of the instant violation (Citation No. 05-1591), Licensee is not entitled to the application of the lower penalty parameter of \$50.00 to \$1,000.00.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee KAREN L. LESHER, pay a fine of \$1,250.00 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 September, 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.