

Mailing Date: NOV 06 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0218
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-314266
v.	:	
	:	LID - 43771
F AND G SHADE MOUNTAIN INN,	:	
INC.	:	
10866 RTE. 104	:	
MIDDLEBURG, PA 17842-9661	:	
	:	
	:	
SNYDER COUNTY	:	
LICENSE NO. R-AP-SS-16988	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire

For Licensee
Lonnie C. Hill, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 16, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against F AND G SHADE MOUNTAIN INN, INC., License Number R-AP-SS-16988 (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 July 1, 2005, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

The investigation which gave rise to the citation began on January 6, 2005 and was completed on January 10, 2006; and notice of the violation was sent to Licensee by Certified Mail on January 13, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 29, 2007 in the PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, 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. C.S.B. was born on September 27, 1984, and in July of 2005, he was 20 years old (N.T. 11-12).
2. On July 1, 2005, C.S.B. entered the licensed premises together with a Mr. Reber and two female friends just after midnight (N.T. 11-12).
3. The four individuals in the party, including C.S.B. sat down at a table on the licensed premises near the dart board. After conversation, and playing darts, one of the females in the party asked C.S.B. if he wanted a drink. She then went to the bar and bought C.S.B. a bottle of Miller Lite beer (N.T. 12).
4. After chatting and engaging in several games of darts, C.S.B. borrowed \$2.00 from Mr. Reber and went to the bar and ordered another bottle of beer. He was given the bottle, and he gave the bartender the \$2.00 he had borrowed (N.T. 12).
5. While on the licensed premises on July 1, 2005 C.S.B. was not questioned as to how old he was, nor was he asked to produce any form of identification. He did not fill out any paperwork (N.T. 13).

CONCLUSION OF LAW:

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

DISCUSSION:

The preponderance of the credible evidence indicates that the minor in question was served alcoholic beverages without being questioned relative to age or being asked to produce proper identification. The charge in the citation must, therefore, be sustained.

In a liquor license case, the burden is on the Commonwealth to establish a violation by a clear preponderance of the evidence. *In re Omicron Enterprises*, 449 A.2d 857 (Pa.CmwltH 1982).

The phrase “preponderance of evidence” has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. *Black’s Law Dictionary, Fifth Edition*, West Publishing Company, Copyright 1979, Page 1064.

It is within my province, and is part of my responsibility to determine the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robinson*, 561 A.2d 82 (Pa.CmwltH 1989). I may give testimony such consideration as it may deserve, and accept it or reject it in whole or in part. *McFarland Landscape Service v. Workmen’s Comp. Bd. Of Appeal*, 557 A.2d 816, 817-18 (Pa.CmwltH 1989); *Hollenbach v. North Wales Foundry Co.*, 136 A.2d 148, 150 (Pa.Super 1957).

In this case, I find the testimony of the minor in this case to be credible and complete.

Licensee produced evidence that the licensed premises has a “card reading machine.” However, there is no direct evidence that such a machine was used in this case. In fact, the testimony of the minor is to the effect that he was not requested to produce any identification which could have been used in conjunction with such a machine.

Consequently I find that the Bureau has sustained its burden by a preponderance of the credible evidence.

PRIOR RECORD:

Licensee has been licensed since April 23, 1999, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

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

ORDER

THEREFORE, it is hereby ordered that Licensee F AND G SHADE MOUNTAIN INN, INC., 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.

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. 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 is issued.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the liquor Code [47 P.S. §4-471(d)].

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 24th day of October, 2007.

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.

Detach here and submit stub with payment

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

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