

Mailing Date: AUG 22 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0234
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-324718
v.	:	
	:	LID - 49337
MATRIX NIGHTCLUB INC	:	
T/A MATRIX NIGHTCLUB	:	
5 STATION SQUARE DRIVE EAST	:	
PITTSBURGH PA 15219	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-12951	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement  
Michael Nickles, Esquire

For Licensee  
Charles Caputo, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on February 13, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Matrix Nightclub, Inc., t/a Matrix Nightclub, License Number R-AP-12951 (hereinafter Licensee).

The citation contains two counts.

The first count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on January 1, 2006, 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 second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on January 1, 2006, 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 2:30 a.m.

An administrative hearing was conducted on July 11, 2006, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Michael Nickles, Esquire. Licensee was represented by Charles Caputo, Esquire.

The Bureau began its investigation of this matter on January 1, 2006, and completed its investigation on January 1, 2006. Thereafter, Licensee was notified of the nature of the violation(s) disclosed by the investigation by letter sent by certified mail on January 12, 2006. Counsel for Licensee stipulates that the notice provisions of Section 471 of the Liquor Code have been satisfied.

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:

COUNTS 1 AND 2

1. On January 1, 2006 at 4:00 a.m., Liquor Enforcement Officer J. M. Massimino accompanied by Enforcement Officers West and Bonadio approached the stairs leading up to the front deck and entrance to Licensee's premises at which time he observed two unidentified males walking down the stairs each in possession of and consuming from a 12-oz. bottle of Coors Light beer. (N.T. 7, 10)

2. Upon entering the front door of Licensee's premises, Officer Massimino identified himself and his fellow officers to a male who appeared to be the doorman. (N.T. 7)

3. Upon entering the barroom area of Licensee's premises, Officer Massimino observed a female later identified as Jessie L. Williams seated at the bar in possession of and consuming a 12-oz. bottle of Coors Light beer that was described as approximately  $\frac{3}{4}$  full and appeared cold with condensation on the outside of the bottle. During the evening of December 31, 2005-January 1, 2006, Jessie L. Williams was employed as a bartender at Licensee's premises. On January 1, 2006 at approximately 3:00 a.m., Ms. Williams concluded her shift for the evening and departed the premises. (N.T. 8, 10, 14)

4. Officer Massimino then spoke with Licensee's manager Michael R. Manning who indicated that all of the individuals present were Licensee's employees. (N.T. 8, 25)

5. Officer Massimino believed that with the exception of Jessie L. Williams, the remaining five employees were all actively engaged in employment related activities. (N.T. 12, 25)

6. Officers Massimino, West and Bonadio departed Licensee's premises at 4:15 a.m. with Mr. Manning and the other employees remaining. (N.T. 9)

#### DISCUSSION:

The facts as presented by the Bureau and Licensee are clear. On Sunday, January 1, 2006 at 4:00 a.m., Liquor Enforcement Officers Massimino, West and Bonadio approached Licensee's premises upon observing two unidentified males exiting the front door deck area of the premises each in possession of and consuming from 12-oz. bottles of Coors Light beer. Upon identifying themselves to a doorman, the Enforcement officers entered the barroom area of Licensee's premises where Officer Massimino immediately focused his attention on a female seated at the bar in possession of and consuming a 12-oz. bottle of Coors Light beer approximately  $\frac{3}{4}$  full which appeared cold as it had condensation on the outside of the bottle. This female was then identified as Jessie L. Williams who had ended her shift as a bartender for Licensee at approximately 3:00 a.m. that evening.

Jessie Williams testified that upon ending her shift early Sunday, January 1, 2006 at approximately 3:00 a.m., she and others decided to tailgate and drink in the parking lot outside the premises which lot is shared with other businesses. Ms. Williams testified that she reentered Licensee's premises at approximately 3:45 a.m. to use the ladies room and remained inside the premises seated at the bar in possession of the 12-oz. bottle of Coors Light beer when the Enforcement officers entered.

In light of the foregoing facts, this court concludes that the Bureau has clearly established that at 4:00 a.m. on January 1, 2006, Jessie Williams was in possession of and consuming a 12-oz. bottle of Coors Light beer on Licensee's premises and was not engaged in any employment related activities in violation of Section 499(a) of the Liquor Code. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982). Also see: *3905 Forbes Avenue, Inc.*, 10 OALJ Sel. Op. Page 216.

CONCLUSIONS OF LAW:

1. On January 1, 2006, 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.

2. On January 1, 2006, 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 2:30 a.m., in violation of Section 499(a) of the Liquor Code.

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 types set forth in this citation.

In consideration of the fact that counts one and two of this citation arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

In mitigation, the record discloses that this citation represents Licensee's first violations.

For the foregoing reasons, a penalty shall be imposed in the amount of \$500.00.

ORDER:

THEREFORE, it is hereby ordered that Matrix Nightclub, Inc., t/a Matrix Nightclub, License Number R-AP-12951, pay a fine of \$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.

MATRIX NIGHTCLUB, INC.

Citation Number 06-0234

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 4<sup>th</sup> day of August, 2006.

---

Roderick Frisk, J.

bg

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.