

Mailing Date: DEC 19 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0271
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-322415
v.	:	
	:	LID - 24154
E J'S PLACE, INC.	:	
7605 ROOSEVELT BOULEVARD	:	
PHILADELPHIA, PA 19152-3917	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-13616	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
James E. Dailey, Esquire
Pennsylvania State Police
6901 Woodland Avenue
Third Floor
Philadelphia, PA 19142

For Licensee
Patrick M. McHugh, Esquire
Suite 214
8040 Roosevelt Boulevard
Philadelphia, PA 19152

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 14, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against E J's Place, Inc. (Licensee), License Number R-AP-SS-EHF-13616.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on December 1, 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.

An evidentiary hearing was conducted on November 6, 2006 at the Philadelphia State Office Building, 1400 West Spring Garden Street, 13th Floor, Room #2, Philadelphia, 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 November 18, 2005 and completed it on January 10, 2006. (Commonwealth Exhibit No.B-1, N.T. 30)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on January 17, 2005. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 30)
3. A Bureau Enforcement Officer entered the premises on December 1, 2005 at approximately 8:45 p.m. The Officer's attention was drawn to a group of individuals approximately fifteen feet away. The group was loud. The Officer noticed one of the group who was starting to sway a little bit side to side as he was standing at the table making conversation. He seemed to be very loud. At one point, the patron walked in a very exaggerated curve around the table, "staggering almost to say." As he came around the table, he bumped into a chair. (N.T. 15-18)
4. The customer returned to his earlier position at the table with his friends, still staggering. He walked back to his original position. (N.T. 18)
5. The barmaid served the customer a pint glass of beer. (N.T. 19)

1. Commonwealth Exhibit No. B-2, N.T. 30.

6. Later in the evening, the individual being observed by the Officer began walking around "kind of staggering" as he walked. As he walked past the Officer, the customer had an odor of alcohol. His eyes were "somewhat bloodshot." He then walked out the door. (N.T. 21)

7. In the opinion of the Enforcement Officer, the patron was visibly intoxicated. (N.T. 23)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The Bureau has **failed** to prove that on December 1, 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

DISCUSSION:

While it may be true the customer in question indeed was visibly intoxicated immediately prior to service, I find little in this record that provides me sufficient confidence to accord the Officer's testimony significant weight. The Officer's testimony regarding the condition of the patron prior to service was sketchy and vague.

That patrons are loud, or mimicking Larry The Cable Guy, may point to visible intoxication but that alone is certainly not dispositive. Were that the case, the Bureau could certainly have charged Licensee with serving more than one visibly intoxicated patron as an entire group was boisterous.

As I have remarked on multiple occasions, precisely when a patron crosses the line from marginal sobriety to visible intoxication is difficult to assess. So, I must be exceedingly cautious when evaluating testimony about a patron's condition after consumption of alcoholic beverages. I well appreciate a patron's evident visible intoxication, after consumption, is relevant to demonstrate it is more likely the patron was visibly intoxicated prior to service. Nonetheless, it is dangerous to assume a patron's level of sobriety prior to service and after consumption are necessarily the same. In point of fact, the more one drinks, the more likely it is for one to manifest the exacerbating impact.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 06-0271, issued against E J's Place, Inc., is DISMISSED.

Dated this 12th day of December, 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.