

Mailing Date: AUG 21 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0275
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-323036
v.	:	
	:	LID - 48059
SAI AND SHIV, INC.	:	
T/A DAYS INN	:	
1946 SCRANTON/CARBONDALE	:	
HWY.	:	
DICKSON CITY	:	
SCRANTON, PA 18508	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. H-AP-SS-5868	:	

**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  
Richard A. Fanucci, Esquire  
1418 Main Street  
Ste. 206  
Peckville, PA 18452

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on February 24, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Sai and Shiv, Inc., t/a Days Inn (Licensee), License Number H-AP-SS-5868.

The citation<sup>1</sup> 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 31, 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 female patron.

An evidentiary hearing was conducted on July 18, 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. Licensee agreed that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code. (N.T. 7-8)

2. On December 31, 2005, a Bureau Enforcement Officer was conducting an undercover visit of the licensed premises. At about 1:20 a.m., a female customer bumped into the Officer. When the customer turned around she apologized. Her eyes were glassy and her speech was slurred. She also had the strong odor of alcohol on her breath. At 1:30 a.m., ten minutes later, she purchased a bottle of beer. (N.T. 10-11)

3. The female customer then received a shot of what appeared to be some type of whiskey from an unknown male. She consumed the shot of whiskey. (N.T. 11-12)

4. At approximately 1:40 a.m., the female customer wanted to light a cigarette. She leaned in the direction of the male customer who had previously purchased her a shot of whiskey. She leaned forward twice and was unable to get her cigarette lit. She took the lighter herself from the male customer and attempted to strike it to light it. As she put the lighter to the cigarette, she missed the cigarette. On the second attempt, she did light the cigarette. (N.T. 13-15)

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1. Judge's Exhibit No. J-1, N.T. 8.

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 31, 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 female patron.

DISCUSSION:

I cannot accord the Officer's conclusion that the patron was served while visibly intoxicated prior to service any significant weight. Most observations of the patron occurred after service. The observations the Officer made regarding the patron's condition before service were marginal. The critical element in these cases is the condition of the patron at the time of service. Having been served at 1:20 a.m., and having consumed a shot of whiskey and a beer, it is entirely possible that the patron's condition would have deteriorated to the point of visible intoxication at 1:40 a.m. Accordingly, I must dismiss the charge.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 06-0275 issued against Sai and Shiv, Inc., t/a Days Inn, is DISMISSED.

Dated this 11<sup>th</sup> day of August, 2006.

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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.**