

Mailing Date: NOV 09 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0331C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-316267
v.	:	
	:	LID - 14296
GUTSHALL'S CAFÉ, INC.	:	
293 EAST MAIN STREET	:	
MIDDLETOWN, PA 17057-2230	:	
	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-10280	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew Lovette, Esquire

For Licensee
Brian Demko, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 2, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against GUTSHALL'S CAFÉ, INC., License Number R-AP-SS-10280 (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 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 August 10, 2005 and was completed on January 24, 2006; and notice of the violation was sent to Licensee by Certified Mail on February 1, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 20, 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. J.S. was born on September 13, 1985, and, in November of 2005, he was 20 years old (N.T. 22-23).
2. On November 10, 2005 J.S. entered the licensed premises and asked the bartender for a six pack of Budweiser beer (N.T. 23).
3. The aforementioned minor purchased the Budweiser beer with a \$10.00 bill without being asked for identification. He gave the bartender a \$10.00 bill and received \$3.00 in change. He then exited the licensed premises (N.T. 23).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since August 8, 1988, and has had eight prior violations:

Citation No. 91-1315. Fine \$1,500.00 and 7 days suspension.

1. Sales between 2:00 a.m. and 7:00 a.m.
2. Aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

Citation No. 94-1394. Fine \$500.00.

1. Sales to a visibly intoxicated person.

Citation No. 96-1752. Fine \$750.00.

1. Sales to a visibly intoxicated person. June 29, 1996.

Citation No. 97-0418. 2 days suspension.

1. Sales to a visibly intoxicated person. December 14, 1996.
2. Sales between 2:00 a.m. and 7:00 a.m. December 14, 1996.

Citation No. 97-1739. Fine \$1,000.00 and 30 days suspension. OALJ reconsidered and modified penalty to fine \$500.00 and 4 days suspension.

1. Sold alcoholic beverages after its restaurant liquor license expired and had not been renewed. March 1 through July 2, 1997.

Citation No. 98-1330. Fine \$1,000.00 and 3 days suspension. Fine not paid and license suspended 1 additional day and thereafter until fine paid.

1. Sales to a minor. February 14, April 17, 1998 and divers other occasions from November 1997 to April 17, 1998.
2. Minor frequenting. February 14, April 17, 1998 and divers other occasions from November, 1997 to April 17, 1998.

Citation No. 01-2087. 10 days suspension.

1. Sold alcoholic beverages after your Restaurant liquor license expired and had not been renewed and/or validated.
Divers occasions from March 1, 2001 until May 23, 2001.
2. Operated the licensed establishment without a valid Health Permit or license.
February 5, July 12, 2001 and divers occasions from December 1, 2001 until July 12, 2001.
3. Sales to a minor.
July 12, 2001.
4. Minors frequenting.
July 12, 2001.
5. Failed to keep on the licensed premises and/or provided an authorized employee of the Enforcement Bureau access to or the opportunity to copy complete and truthful records covering the operation of the licensed business.
July 25, August 1, 21 and 22, 2001.

Citation No. 04-0887. Fine \$1,200.00, 4 days suspension with thereafter conditions.

1. Not a bona fide restaurant in that food items were insufficient and/or failed to provide food upon request. April 12, 2004.
2. Operated the licensed establishment without a valid health permit or license. December 1, 2003 to January 5, 2004.
3. Sales after the restaurant liquor license expired and had not been renewed and/or validated. March 15, 2004 and divers occasions from March 1 to March 18, 2004.

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.

Under the circumstances of this case, the penalty imposed shall be fine of \$1,500.00 and RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee GUTSHALL'S CAFÉ, INC., pay a fine of \$1,500.00 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.

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 was issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

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)].

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 26th day of October, 2006.

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.