

Mailing Date: OCT 19 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0744C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-327368
	:	
2105 ROZ'S TOWNE TAVERN INC.	:	
2105 BRIDGE ST.	:	LID - 10476
PHILADELPHIA PA 19124-2025	:	
	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-2358	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

EDWARD B. McHUGH, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 4, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 2105 Roz's Towne Tavern, Inc., License Number R-AP-SS-2358 (hereinafter "Licensee").

An Administrative hearing was held on Thursday, December 7, 2006, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on February 9, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, nineteen (19) years of age.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on February 9, 2006, Licensee, by its 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.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. John Bernesky is employed by the Bureau of Enforcement and at the time of hearing, had been so employed for approximately three years. On February 9, 2006, he conducted an investigation of the licensed premises. He was there to conduct an age compliance check (N.T. 6-7).

2. When the officer entered the premises on February 9, 2006, he observed a female bartender and approximately six patrons. He entered at approximately 10:40 p.m. An underage buyer, who was part of the age compliance program, entered the premises shortly after the officer and under the officer's direct supervision. As she entered the bar, she approached and asked the female bartender for a twelve-ounce bottle of Heineken beer. The female bartender asked for her identification. The underage buyer provided identification. The female bartender viewed the identification under a fluorescent light that was located underneath the bar. She then gave the identification back to the underage buyer and explained to her that she looked pretty young and that is why she was carded (N.T. 9).

3. The female bartender then gave the twelve-ounce bottle of Heineken to the underage buyer. The underage buyer gave her a ten-dollar bill. She paid \$2.75 for the Heineken beer and \$7.25 was returned to the underage buyer (N.T. 9-10).

4. The underage buyer told the bartender that the beer was to go, therefore, the bartender placed it in a brown paper bag and the underage buyer left the bar with the beer in her hand (N.T. 10).

5. A detail of officers who were outside the bar entered the premises and informed the bartender that she had served a minor who was participating in the age compliance program. While on the premises, Officer Bernesky saw a patron who he described as having black hair, glasses and wearing a light brown shirt. At the time he first encountered her, she was seated about ten feet from him across the bar. The patron was drinking a liquid, which was light brown in color from a clear glass. She had a cigarette, which she was attempting to light. As she attempted to light the cigarette, she missed her cigarette with the flame two or three times. The flame was approximately two or three inches from the cigarette. She was talking to another patron next to her. Her speech appeared to be slurred. He noted that her eyes appeared to be glassy. She tried to put the cigarette ashes in the ashtray on a few occasions and missed. She finished her drink and asked the bartender for another drink. The bartender poured some clear soda into a clear glass and then poured approximately one shot of whiskey into the soda and gave it to the patron. She requested three dollars in currency. The patron paid her (N.T. 10-11).

6. The identification was not a Pennsylvania driver's license (N.T. 15).

7. The underage buyer was born on February 10, 1986 and on February 9, 2006, she was nineteen years of age and was part of an age compliance program (N.T. 25-26).

8. As a part of her duties for the age compliance program, she visited the licensed premises at approximately 10:40 p.m. She entered the bar and approached the female bartender and asked for a twelve ounce Heineken beer. She was asked for identification and she presented it. The bartender looked at it underneath the light and explained to her that she looked young. She gave her back the identification and gave her the Heineken. The Heineken was \$2.75. She gave her a ten-dollar bill and \$7.25 in change and put the beer in a brown bag, whereupon, the underage buyer left the premises (N.T. 26-27).

9. The identification given to her was a Pennsylvania state identification card issued by the Department of Transportation (N.T. 27-28).

10. The minor turned in her Pennsylvania state identification card when she received her driver's license (N.T. 28).

11. When she got outside, she handed the bag with the beer in it to Officer Frank Spera. She never consumed any alcoholic beverages, while inside the premises (N.T. 28-29).

12. Before going into the licensed premises, the investigating officer saw her identification card (N.T. 30-31).

13. Prior to going into the premises, the identification card was in her jean jacket (N.T. 32).

14. Officer Kareem Davis at the time of the hearing had been employed by the Bureau of Enforcement for approximately four years. On February 9, 2006, he was part of the detail that visited the licensed premises for an age compliance check. The officer waited outside after the underage buyer made the purchase. He went inside the premises with Officer Spera and Hess, identified themselves and told the Licensee or his employees about the age compliance detail. He further told the bartender that she would be receiving notification in ten days. He got the relevant information from the liquor license and information about the bartender (N.T. 35-36).

15. The bartender who served the underage buyer was determined to be Marie Groves (N.T. 36).

16. Officer Bernesky was in the premises at that time and remained undercover (N.T. 37).

17. Officer Davis indicated that there were other patrons in the bar who were sitting and watching what the officers were doing (N.T. 38).

18. Marie Groves is employed as a bartender at the licensed premises. She is also the Board manager (N.T. 38-39).

19. Robert Rozdzielsiki is the owner of the premises (N.T. 39).

20. Ms. Grove described the premises as a neighborhood corner bar (N.T. 39).

21. According to Ms. Grove, she was the only bartender working and there were approximately six patrons on the premises (N.T. 43).

22. Ms. Grove indicated that a patron came into the bar, that is to say a young lady who was very nervous. The bartender did request to see her identification card. She indicated that she had just broken her glasses, so she put the identification under the fluorescent light. The date of birth appeared to her to be 1983 and not 1985. In actuality, the card indicated 1986 (N.T. 43-45).

23. One of the patrons indicated to the bartender that the individual was only twenty years of age, but at that time she had already made the sale and it was too late to stop her from leaving the premises (N.T. 45-46).

24. At the time of this incident, the bartender had taken a RAMP course (N.T. 46-47 and Exhibit L-3).

25. Records from the Liquor Control Board confirm that a bartender took an owner/manager course at the Holy Family University on April 13, 2006 (N.T. 48 and Exhibit L-3).

26. She is now in the process of being fully certified (N.T.48).

27. Ms. Grove does not recall anyone being visibly intoxicated. Ms. Grove identified Sue Bates as the person the officer believed was visibly intoxicated. Ms. Grove indicates that she knows Sue Bates very well and that she does has a speech impediment, which resulted from a severe injury to her tongue during a car accident. She has known her for approximately sixteen years (N.T. 51-52).

28. On February 9, 2006, Ms. Grove recalled serving Ms. Bates a Dwyer's and soda and taking three dollars from her (N.T. 52).

29. Ms. Grove is aware of the signs of intoxication and does not believe that Ms. Bates was intoxicated (N.T. 52).

30. Kimberly Bilger is employed at the licensed premises and has been so employed for approximately six years. She was in the licensed premises on February 9, 2006 at 10:30 p.m. as a patron (N.T. 53).

31. Ms. Bilger indicated that she was there with her friends, Chris, Sue and Helena (N.T. 56-57).

32. She also indicated that Ms. Bates has a speech impediment and that she has been her friend for many years, and comes regularly to the premises. She recalls Officer Bernesky being approximately ten feet away from Ms. Bates. She indicated that she and Sue often joke but that she did not witness signs of intoxication (N.T. 57-58).

33. Ms. Bilger indicated that Ms. Bates was not able to be in Court, because she had to work and there was no one to take her place (N.T. 59).

CONCLUSIONS OF LAW:

Count No. 1 - On February 9, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

Count No. 2 - There is insufficient evidence to conclude that on February 9, 2006, Licensee, by its 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, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

PRIOR RECORD:

Licensee has been licensed since October 20, 1979, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

2105 Roz's Towne Tavern, Inc.
Citation No. 06-0744C

Citation No. 89-1931. \$300.00 fine.

1. Fortified, adulterated and/or contaminated liquor.

DISCUSSION:

The officer noted some indicators of visible intoxication, the patron's elbows slipping off the bar and having trouble lighting her cigarette. He believed that her speech was slurred. He did not see her walk. She did not sway or bob her head. The officer indicated that her eyes were glassy, but she was seen at a distance of ten feet away from him. The police were on the premises talking to the bartender and no one indicated that she was loud or boisterous or intervened or interceded or in any other way appeared to be visibly intoxicated during this time. None of the other officers noted any unusual behavior on the patron's part.

Under the circumstances, the Licensee is given the benefit of the doubt but should be very aware that service to a visibly intoxicated person is an egregious offense. At times bar personnel make the mistake of believing that because someone is a regular patron or lives nearby, that it is permissible for them to allow them to drink past the point of intoxication. It is not.

After careful review of the facts of this case, a \$1,500.00 penalty shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Therefore, penalties shall be assessed as follows:

- Count No. 1 - \$1,500.00.
- Count No. 2 - DISMISSED.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 2105 Roz's Towne Tavern, Inc., License Number R-AP-SS-2358, pay a fine of One Thousand Five Hundred Dollars (\$1,500.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

2105 Roz's Towne Tavern, Inc.
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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. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (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. Section 4-471(d).

In order to insure compliance with this Order, jurisdiction of this matter is retained.

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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Dated this 18th day of October, 2007.

Tania E. Wright, J.

NOTE: 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.

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