

Mailing Date: DEC 29 2008

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0924
LIQUOR CONTROL ENFORCEMENT	:	
	:	
	:	
v.	:	Incident No. W01-313906
	:	
	:	
RAY-AMATO INC.	:	
T/A STICK'S	:	LID - 17705
8900 WEST CHESTER PIKE	:	
KIRKLYN	:	
UPPER DARBY TWP.	:	
UPPER DARBY PA 19082-2605	:	
DELAWARE COUNTY	:	
LICENSE NO. R-SS-15992	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

MICHAEL J. MALLOY, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

Ray-Amato, Inc. t/a
Stick's
Citation No. 06-0924

This proceeding arises out of a citation that was issued on April 25, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Ray-Amato, Inc., t/a Stick's, License Number R-SS-15992 (hereinafter "Licensee").

Administrative hearings were held on Tuesday, March 18, 2008 and Wednesday, September 10, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter.

The citation contains eleven counts.

The first count charges Licensee with violation of Section 493(21) of the Liquor Code, 47 P.S. Section 4-493(21), in that on September 21, 2005, Licensee, by its servants, agents or employees, refused Enforcement officers the right to inspect completely the entire licensed premises at a time during which the premises were open for the transaction of business or when patrons or guests or members were in that portion of the licensed premises wherein alcoholic beverages are sold.

The second count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471 and Sections 2706 and 5101 of the Crimes Code, 18 Pa. C.S. Sections 2706 and 5101, in that on September 21, 2005, Licensee, by its servants, agents or employees, interfered with a Liquor Control Enforcement Officer in the performance of his duties.

The third count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, in that on September 21, 2005, the licensed establishment was operated in a noisy and/or disorderly manner.

The fourth count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on September 21, 2005, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated male patron.

The fifth count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, in that on September 21, 2005, the corporate secretary was visibly intoxicated on the licensed premises.

The sixth charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on September 21, 2005, and divers other occasions within the past year, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age.

Ray-Amato, Inc. t/a

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The seventh count charges Licensee with violation of Section 493(14) of the Liquor Code, 47 P.S. Section 4-493(14), in that on September 21, 2005, and divers other occasions within the past year, Licensee, by its servants, agents or employes, permitted one (1) male minor, twenty (20) years of age, to frequent the licensed premises.

The eighth count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a), in that on September 21, 2005, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The ninth count charges Licensee with violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12), in that on September 21 and 27, 2005, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises.

The tenth count charges Licensee with violation of Section 5.51(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.51(a), in that prior to September 27, 2005, Licensee, by its servants, agents or employes, failed to clean coils, tap rods and connections at least once every seven (7) days.

The eleventh count charges Licensee with violation of Section 467 of the Liquor Code, 47 P.S. Section 4-467, in that on September 21 and 27, 2005, Licensee, by its servants, agents or employes, failed to constantly and conspicuously expose Restaurant Liquor License under a transparent substance on the licensed premises.

COUNT NOS. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 AND 11

FINDINGS OF FACT:

1. On September 21, 2005 at approximately 5:50 p.m., Officer K. Davis entered the licensed premises in order to conduct a routine inspection. The bar was open and operating. One male bartender, Matthew Hally, was tending bar and rendering service of alcoholic beverages to eight to ten patrons. Officer Davis was wearing street clothing, i.e., khaki pants and a polo shirt. Officer Davis identified himself as an Enforcement officer with the Pennsylvania State Police, Bureau of Liquor Control Enforcement and presented his badge to Mr. Hally. The officer informed him that a routine inspection would be conducted. He further explained that he would need to see the liquor license, beer and liquor receipts, and coil cleaning records. Mr. Hally told the officer

that he did not know the whereabouts of the documents. Officer Davis asked to speak with an owner or manager (N.T. 8-11, 15, 20, 29, 32 and 48).

2. Officer Davis was directed to a male who had been sitting at the bar. This male was later identified as William O'Malley, secretary of the licensed premises. Mr. O'Malley walked up to the officer and again, the officer identified himself and presented his badge. Mr. O'Malley attempted to identify himself to the officer, but the officer had difficulty understanding him. The officer believes that he was saying that he was the owner of the premises. Mr. O'Malley's speech was very slurred and his eyes were bloodshot. The officer detected a strong odor of alcohol on Mr. O'Malley's breath. The officer told Mr. O'Malley that he needed the liquor and beer invoices in order to complete his inspection. The officer concluded that Mr. O'Malley was intoxicated (N.T. 11-15, 33, 35-39 and 51)

3. After making repeated requests to get the information from Mr. O'Malley, the officer again turned to the bartender, Mr. Hally, and requested he contact the owner. Mr. Hally provided the officer with the liquor license. While Officer Davis recorded information from the liquor license, Mr. O'Malley, who was on the opposite side of the bar, began to speak in a loud voice, rant, rave and curse at the officer. Mr. O'Malley reached out and attempted to grab the liquor license out of the officer's hand (N.T. 15-16 - March 18, 2008).

4. A patron, later identified as Michael Brady started yelling at the officer saying, "You can't do this, who do you think you are?" Officer Davis turned to Mr. Brady and asked if he was the owner, to which he replied he was not. The officer then stated to Mr. Brady that the matter did not concern him. Approximately four other patrons began shouting at the officer saying that he had "no need to treat people like that" and "there's no need to act that way." Mr. Brady and Mr. O'Malley continued to rant and rave (N.T. 17-18, 39 and 40 - March 18, 2008).

5. Officer Davis backed away from the bar area towards the door and telephoned and waited for assistance from other officers. While Officer Davis was on the phone, Mr. O'Malley instructed the bartender, Mr. Hally, to lock all of the doors, and handed the keys to Mr. Hally. Mr. O'Malley turned to Officer Davis and stated, "Let me see you get out." Mr. Hally took a couple of steps, but did not move towards the door. No one ever locked the door (N.T. 21-23, 25 and 41 - March 18, 2008).

6. The jukebox was playing at what the officer stated was a *normal volume* when the officer entered the premises. Further exasperating the brouhaha, Mr. O'Malley handed the bartender some currency and told him to turn the jukebox up. The bartender, Mr. Hally, complied with Mr. O'Malley's instructions, came from behind the bar, put money in the jukebox, selected several songs and played the music very loudly. The music was sufficiently loud so as to make it difficult for the party on the other end of the phone to hear, as the officer placed his call (N.T. 23 - March 18, 2008 and N.T. 51 - September 10, 2008).

7. During the commotion, Mr. O'Malley instructed the bartender to give him another *shot*. There were already shot glasses on the bar in front of Mr. O'Malley. The bartender served Mr. O'Malley, but the officer was unable to determine the type of liquor given to him (N.T. 28 - March 18, 2008).

8. Officer John Bernesky went to the licensed premises, along with other officers, in order to assist Officer Davis. The officers parked about twenty-five feet from the premises. They heard loud music and the sound of a bass drum coming from within the bar. When they entered the door, they heard the music that was playing outside, playing inside the premises. The officers entered the premises, identified themselves and asked who was giving Officer Davis a problem. Officer Davis pointed to Mr. O'Malley. Officer Bernesky asked Mr. O'Malley to show him some identification. Mr. O'Malley refused. Mr. O'Malley's eyes were glassy and he appeared to be intoxicated. Mr. O'Malley was handcuffed and cited for public drunkenness and disorderly conduct (N.T. 55-57 and 60 - March 18, 2008).

9. Officer Ed Mullen was part of the detail of Bureau officers who went to the licensed premises at approximately 6:00 p.m. on September 21, 2005 to assist Officer Davis. When he arrived, he heard loud music emanating from the premises at distances of up to thirty feet. The officer determined that the loud music was coming from the jukebox, which he then unplugged. Officer Mullen cited Mr. Hally for disorderly conduct based upon information that he obtained from Officer Davis (N.T. 65-68 - March 18, 2008).

10. Officer Mullen visited the premises at approximately 10:15 a.m., on September 27, 2005, along with several other Bureau officers. The premises were open and operating. Officer Mullen went to the premises to inspect the Licensee's business and financial records. The records were not available, even though the officers indicated during their visit of September 21, 2005 that they would return in a week to look at Licensee's invoices (N.T. 69-71 - March 18, 2008).

11. Officer Eric Gall went to the licensed premises with a detail of officers on September 27, 2005. When questioned, the bartender indicated that he knew nothing about the whereabouts of the records (N.T. 74-76 - March 18, 2008).

12. On September 21, 2005, Gary Ford was employed as an officer with the Bureau. He is now a state police trooper. On September 21, 2005, he arrived at the licensed premises at approximately 6:10 p.m., along with a detail of Bureau officers. He was directed to go to the premises, in that Officer Davis had reported that some of the patrons were unruly and that he was having a hard time conducting a routine inspection. The officers identified themselves immediately upon entering the premises (N.T. 5- 6 - September 10, 2008).

13. While inside the premises, Officer Ford observed a youthful appearing male patron at the bar, consuming a twelve-ounce bottle of Miller Lite beer. The officer requested identification from the male. The male stated that he was twenty-one years of age but did not have

identification. The officer contacted District Office No. 1 to have the male's information verified. At this point, the male stated his identification was in his truck. Officer Ford and the male proceeded to the truck and retrieved the male's identification. The male, through his Pennsylvania Driver's license, was identified as R. A., twenty years of age, born March 1, 1985. This male was cited by the officer for underage drinking and frequenting. The Licensee did not present the officer with a declaration of age card file, scanning device or a photocopy of any identification card (N.T. 7-16 - September 10, 2008).

14. R. A. was born March 1, 1985 and was twenty years of age on September 21, 2005. On that date, at approximately 6:00 p.m., he was served, in possession of, purchased and consumed alcoholic beverages inside the premises. He was not accompanied by a parent or legal guardian. On September 21, 2005, he ordered and was served one twelve-ounce bottle of Miller Lite beer (N.T. 17-18 - September 10, 2008).

15. The minor was not challenged relative to his age on that occasion nor was he required to sign a declaration of age card. The minor was in the premises the night before, at which time he presented false identification. He presented false identification at various times when he visited the premises. He indicated that on one occasion his identification card was scanned, however, he does not know the results. The minor has been served, in possession of, purchased and consumed alcoholic beverages on at least fifteen to twenty other occasions within the past year (N.T. 19-20 and 55 - September 10, 2008).

16. After the detail of officers arrived, Officer Davis was able to complete the routine inspection. The inspection revealed that the premises did not keep beer and liquor invoices, financial records or coil cleaning records on the premises. Licensee did not have its liquor license displayed. The liquor license was located under the counter behind some liquor bottles (N.T. 2629 - September 10, 2008).

17. On September 21, 2005, Matthew Hally was working as a bartender at the licensed premises. He has been a bartender for approximately two days a week for approximately ten years. He generally works from 10:00 a.m. to 6:00 p.m. (N.T. 45-46 - September 10, 2008).

18. Mr. Hally recalled that on September 10, 2008, when Officer Davis entered the premises there were from eight to ten patrons on the premises. He recalls that the time was somewhere between 4:30 p.m. and 6:00 p.m. After the officer identified himself and asked for the liquor license and the food and health license, Mr. Hally retrieved the liquor license and asked Mr. O'Malley about the food and health license. Mr. O'Malley questioned Mr. Hally about the reason for Officer Davis' visit. Mr. O'Malley approached the officer and *they had words* (N.T. 47-48 - September 10, 2008).

CONCLUSIONS OF LAW:

Ray-Amato, Inc. t/a

Stick's

Citation No. 06-0924

Count No. 1 - On September 21, 2005, Licensee, by its servants, agents or employes, refused Enforcement officers the right to inspect completely the entire licensed premises at a time during which the premises were open for the transaction of business or when patrons or guests or members were in that portion of the licensed premises wherein alcoholic beverages are sold, in violation of Section 493(21) of the Liquor Code, 47 P.S. Section 4-493(21).

Count No. 2 - On September 21, 2005, Licensee, by its servants, agents or employes, interfered with a Liquor Control Enforcement Officer in the performance of his duties, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471 and Sections 2706 and 5101 of the Crimes Code, 18 Pa. C.S. Sections 2706 and 5101.

Count No. 3 - On September 21, 2005, the licensed establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471.

Count No. 4 - On September 21, 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 (1) visibly intoxicated male patron, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

Count No. 5 - On September 21, 2005, the corporate secretary was visibly intoxicated on the licensed premises, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471.

Count No. 6 - On September 21, 2005, and divers other occasions within the past year, 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) male minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

Count No. 7 - On September 21, 2005, and divers other occasions within the past year, Licensee, by its servants, agents or employes, permitted one (1) male minor, twenty (20) years of age, to frequent the licensed premises, in violation of Section 493(14) of the Liquor Code, 47 P.S. Section 4-493(14).

Count No. 8 - On September 21, 2005, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside, in violation of Section 5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.32(a).

Count No. 9 - On September 21 and 27, 2005, Licensee, by its servants, agents or employes, failed to keep records on the licensed premises, in violation of Section 493(12) of the Liquor Code, 47 P.S. Section 4-493(12).

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Count No. 10 - Prior to September 27, 2005, Licensee, by its servants, agents or employes, failed to clean coils, tap rods and connections at least once every seven (7) days, in violation of Section 5.51(a) of the Liquor Control Board Regulations, 40 Pa. Code Section 5.51(a).

Count No. 11 - On September 21 and 27, 2005, Licensee, by its servants, agents or employes, failed to constantly and conspicuously expose Restaurant Liquor License under a transparent substance on the licensed premises, in violation of Section 467 of the Liquor Code, 47 P.S. Section 4-467.

PRIOR RECORD:

Licensee has been licensed since April 16, 1976, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 90-1228. \$450.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.

Citation No. 90-2283. \$900.00 fine and revocation of Sunday Sales Permit for one year. Licensee's appeal to Common Pleas Court modified penalty regarding revocation of Sunday Sales Permit to a five month period.

1. Not a bona fide restaurant in that there were insufficient seating accommodations at tables.
2. Refused an authorized employe of the Bureau of Liquor Control Enforcement access to records.
3. Fortified, adulterated and/or contaminated liquor.
4. Furnished false information regarding sales of food and beverages when applying for a Sunday Sales Permit.
(Withdrawn by Bureau)

Citation No. 91-0642. Three days suspension.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.
2. Not a bona fide restaurant in that there were insufficient seating accommodations at tables.

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Citation No. 98-1923. \$2,000.00 fine.

1. Sales to a visibly intoxicated person.
June 3, 1998.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time. July 4, 1998.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. July 4, 1998.
4. Sales between 2:00 a.m. and 7:00a.m.
July 4, 1998.

5. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
July 28, September 8 and 15, 1998.

Citation No. 01-1473. \$1,000.00 fine.

1. Sales to a visibly intoxicated person. June 19, 2001.

DISCUSSION:

Count Nos. 1, 2 and 3

*Refused Enforcement Officers the Right to Inspect /Interfered with an Enforcement Officer/
Noisy and/or Disorderly*

The right to inspect (search), without warrant or probable cause, is limited to a well recognized exception to the warrant requirement for closely regulated industries. Pursuant to Liquor Code Section 493(21) of the Liquor Code, 47 P.S. Section 4-493(21), Enforcement officers may inspect a licensed premises without warrant or probable cause, when the licensed premises is open for business or when patrons are present. If those pre-conditions exist, the Bureau may claim that a refusal to allow entry violates the Liquor Code. Here, Licensee violated Section 493(21) of the Liquor Code, 47 P.S. Section 4-493(21), on September 21, 2007, by refusing Enforcement officers the right to inspect completely the entire licensed premises at a time when it was open for business. In addition, Licensee violated Section 5101 of the Crimes Code.

Section 5101 of the Crimes Code, 18 Pa. C.S. Section 5101 reads in pertinent part:

A person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical

interference or obstacle, breach of official duty or any other unlawful act...

Mr. Hally, the bartender, claims that the liquor license was lying on the bar and that he grabbed it off the bar. He says that the officer then tried to snatch it from his hands. The officer claimed that the very intoxicated Mr. O'Malley attempted to snatch the license from his hands. While Officer Davis was on the phone, Mr. O'Malley instructed the bartender, Mr. Hally, to lock all of the doors, and handed the keys to Mr. Hally. Mr. O'Malley turned to Officer Davis and stated, "Let me see you get out." Mr. Hally took a couple of steps, but fortunately did not lock the door as he was instructed to do.

Mr. Hally now claims that he turned up the jukebox in order to drown out the argument between the officer and the patrons. Turning up the jukebox made it difficult for the officer to place a call for assistance. Mr. Hally minimized the role of Mr. O'Malley and claims that primarily the melee was between the customers and the Enforcement officer. He claims that after only saying a few words, Mr. O'Malley returned to his seat.

The court did not find Mr. Hally's testimony credible. It is within the province, and the responsibility of the Administrative Law Judge to determine the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robinson*, 561 A.2d 82 (Pa.Cmwlth 1989). The fact finder may give testimony such consideration as it may deserve, and accept it or reject it in whole or in part. *McFarland Landscape Service v. Workmen's Comp. Bd. Of Appeal*, 557 A.2d 816, 817-18 (Pa.Cmwlth 1989); *Hollenbach v. North Wales Foundry Co.*, 136 A.2d 148, 150 (Pa.Super 1957).

By all accounts, Mr. O'Malley did nothing to restore peace and order. Further, blasting the music had the effect of further exacerbating the situation and adding to the list of Licensee's citable offenses.

The premises were open and operating, patrons were present and the Enforcement officer had a right to fully inspect the premises. The Enforcement officer was never physically restrained or kept from leaving the premise. However, the primary question was not whether he could leave. While leaving might have been prudent for his own safety, the relevant question is whether Licensee did something *unlawful to prevent the officer from performing his duties and/or whether Licensee intentionally, by some unlawful act, obstructed or impaired the officer in the performance of his duties.*

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The Court found that Licensee, i.e. the corporate officer and his employee's intimidating tactics put the officer in fear for his safety and thwarted his inspection of the premises. Further, the Licensee's inappropriate behavior incited the patrons to act in a disorderly manner. And, after causing this situation, Licensee did nothing to calm the situation.

Count Nos. 4 and 5

Visibly Intoxicated/Intoxicated Corporate Officer

The officer stated that in his opinion Mr. O'Malley, an officer of the licensed corporation, was intoxicated. He had slurred speech, glassy, bloodshot eyes, smelled of liquor, spoke with a loud voice and his behavior was inappropriate, unseemly and unbecoming a business owner and operator of a licensed establishment. Mr. O'Malley was intoxicated when the officer arrived and was served an alcoholic beverage while in that state. The alcohol no doubt contributed to Mr. O'Malley's inability to control his own behavior and he incited others to act out as well.

Count Nos. 6 and 7

Sales to Minors/Frequenting

A minor was found in possession of alcoholic beverages on the licensed premises on September 21, 2005. The minor had been to the premises on other occasions, when he had been carded. At some point, the minor's identification card had been scanned. However, in order to establish a defense under Section 495 of the Liquor Code, 47 P.S. Section 4-495, visual evidence must be produced in the nature of a signed declaration of age card or a photocopy of the identification card or results from the scanner. Licensee produced no documentary evidence and is therefore liable for having sold to a minor and for allowing that minor to make a number of prior visits to the premises.

Count No. 8

Loudspeakers

The music was not audible outside the premises, when Officer Davis first arrived. While he was attempting to inspect the premises, the music was turned up and could be heard outside the premises. When the detail of officers' approached the premises to assist Officer Davis, the music could be heard from a distance of approximately twenty-five feet from the premises. This does not appear to be an ongoing problem, but a part of the out of control situation that existed at the premises on September 21, 2005, at the time of the officer's visit to the premises.

Count Nos. 9 and 10

Ray-Amato, Inc. t/a
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Failed to keep records on the licensed premises/Failed to clean coils, tap rods and connections

Records concerning the operation of the premises are to be kept on the premises for a period of two years and should be available for inspection by Enforcement officers. Licensee did not have the records available at the time of inspection nor were they available when the officers returned on September 27, 2005. Coils, tap rods and connections are to be cleaned weekly and those cleanings should be documented. Failure to clean these items presents an unnecessary health risk.

Count No. 11

Failed to constantly and conspicuously expose Restaurant Liquor License

Licensee is required to display the liquor license in a conspicuous place and under a transparency. This liquor license was behind the bar, in back of behind some bottles.

Conclusion

Upon thorough review of the testimony and evidence presented, this court is of the opinion that the Bureau has established the violations as charged in Counts one through eleven of this citation by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982).

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 \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count Nos. 1, 2, 3, 4, 5, 8, 9, 10 and 11 of this case.

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 Count Nos. 6 and 7 of this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1,

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47 P.S. Section 4-471, pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$500.00 and one day suspension.

Count No. 2 - \$500.00 and one day suspension.

Count No. 3 - \$250.00.

Count Nos. 4 and 5 (as merged) - \$1,000.00 and one day suspension.

Count Nos. 6 and 7 (as merged) - \$1,250.00 and one day suspension.

Count No. 8 - \$250.00.

Count No. 9 - \$200.00.

Count No. 10 - \$200.00.

Count No. 11 - \$200.00.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Ray-Amato, Inc., t/a Stick's, License Number R-SS-15992, pay a fine of Four Thousand Three Hundred Fifty Dollars (\$4,350.00) 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.

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. 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. Section 4-471(d).

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IT IS ALSO ORDERED that the Restaurant Liquor License of Ray-Amato, Inc., t/a Stick's, License Number R-SS-15992, be suspended for a period of four (4) days **BEGINNING** at 7:00 a.m. on Monday, April 6, 2009 and **ENDING** at 7:00 a.m. on Friday, April 10, 2009.

Licensee is directed on Monday, April 6, 2009 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Friday, April 10, 2009 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

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

Dated this 22ND day of DECEMBER, 2008.



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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Detach Here and Return Stub with Payment

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

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Inc.