

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] in that on December 27, 31, 2005 and January 5, 2006, the licensed establishment was operated in a noisy and/or disorderly manner.

The investigation which gave rise to the citation began on January 1, 2006 and was completed on April 28, 2006; and notice of the violation was sent to Licensee by Certified Mail on May 12, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 18, 2007 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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:

COUNT 1

1. On January 1, 2006 at 2:45 a.m. an officer of the Bureau discovered the principal of Licensee on the licensed premises with an employe and a non-employe individual (Stipulation N.T. 7).

COUNT 2

December 31, 2005

2. On December 31, 2005 Detective Daniel Hull was on patrol in the area of the licensed premises when he was approached by Mr. Reese, a bouncer at the licensed premises who said he was having problems with a patron (N.T. 10-11).

3. The patron in question, Drew Snyder, had visited the licensed premises on December 31, 2005 with a friend, Steve Winslow (N.T. 42).

4. Snyder had been drinking on the licensed premises for four hours. During that time he had 8 or 9 beers and shots of liquor. He was intoxicated (N.T. 43-44).

5. Snyder became involved in an argument and was asked to leave by the bouncer, Mike Reese who grabbed him and pulled him out the door (N.T. 43-44).

6. Snyder told Reese that his ride was inside the licensed premises, but Reese would not let him go back inside. Snyder attempted to get back inside, and there was a struggle between Snyder and Reese (N.T. 45-47).

7. When Detective Hull arrived, Snyder was being held against a vehicle. Hull took a statement from Reese and took Snyder into custody, placed him in his car and took him to the police station (N.T. 12).

8. Snyder was issued two citations: one for disorderly conduct and one for public drunkenness (N.T. 12).

9. Snyder pled guilty to the aforementioned charges and paid fines (N.T. 49-50).

January 4, 2006

10. On January 4, 2006, Kelly Jo Overdorf, sole stockholder of Licensee corporation was present on the licensed premises (N.T. 60).

11. On January 4, 2006 Gary Helminiak was back in a corner of the licensed premises by a pool table. He created a disturbance, and two patrons complained to Overdorf about him (N.T. 60).

12. Overdorf watched Helminiak for twenty minutes, and didn't see him do anything wrong (N.T. 60).

13. At the end of the evening, Helminiak slammed his beer on the bar (N.T. 33 and 60).

14. Because of the earlier complaints Overdorf decided to shut Helminiak off. At that time, he had a full beer. She took his beer (N.T. 60-61).

15. Helminiak made an obscene gesture at Overdorf with his middle finger. She said, "You're going to have to go." Helminiak said he had just paid for his beer. She gave him a chip for his beer and told him to "come back tomorrow." (N.T. 61).

16. Helminiak replied, "F--- you; I'm not leaving." Overdorf said, "you are leaving." (N.T. 61).

17. Helminiak and Overdorf ended up in front of the door to the licensed premises. Helminiak took a swing at her, and she pushed him out the door (N.T. 61).

18. Once outside Helminiak swung at Overdorf again (N.T. 61).

19. Five or six patrons gathered around and Helminiak took swings at several of them. He was out of control (N.T. 61-62).

20. During all the swinging Overdorf went back inside the licensed premises and got a baseball bat, but she never used it (N.T. 62).

21. During the disturbance Overdorf offered to pay for a cab ride to take Helminiak home. Others offered to give him a ride home.

22. An unidentified individual hit Helminiak and knocked him down (N.T. 34-35).

23. Helminiak was picked up and taken home (N.T. 35).

24. An individual named Adam Worden was charged with assaulting Helminiak. At his trial, he was found not guilty (N.T. 19).

CONCLUSIONS OF LAW:

1. The charge in Count 1 of the citation is **sustained**.
2. The charge in Count 2 of the citation is **dismissed**.

DISCUSSION:

COUNT 1

The parties have stipulated that a non-employee was discovered on the licensed premises at 2:45 a.m. on January 1, 2006 by an officer of the Bureau. A violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] is, therefore, established and Count 1 of the citation is sustained.

COUNT 2

The events established by the record are insufficient evidence from which to establish that Licensee operated the licensed premises in a noisy and disorderly manner. The charge in Count 2 of the citation will, therefore, be dismissed.

In *Wendell and Woolridge, Inc.*, III Sel Op. ALJ, 145, Administrative Law Judge Thau analyzed the apparently contradictory appellate court cases dealing with this subject. These cases were *Appeal of Ciro's Lounge, Inc.*, 358 A.2d 141 (Pa. Cmwlth 1976) and *In Re: AJC, Inc.*, 401 A.2d 421 (Pa. Cmwlth 1976). Judge Thau concluded that the test which has evolved from these cases is "...whether, taking all of the circumstances into consideration, the disturbance constitutes an invasion of the public peace, welfare and morals and is indicative of the way Licensee operates his business. This test has been accepted in this office for more than fifteen years.

The two events involved in this case do not meet the test set forth above. In each instance personnel of Licensee took steps to stop the disturbance and remove the offending individuals from the licensed premises.

Licensee cannot be held responsible for a disturbance caused by an individual that erupts spontaneously on the licensed premises, especially where immediate steps are taken to quell the disturbance. Of course, if such incidents become a regular and frequenting occurrence, Licensee would then have an obligation to take measures to prevent such from happening. In this case, two incidents which were brought under control by personnel of Licensee are insufficient to conclude that Licensee operated the licensed business in a noisy and disorderly manner. Consequently, I conclude that the charge in Count 2 of the citation must be dismissed.

PRIOR RECORD:

Licensee has been licensed since October 22, 2003, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$350.00 fine
Count 2 – Dismissed

ORDER

THEREFORE, it is hereby ordered that Licensee DORFF ASSOCIATES, LLC, pay a fine of \$350.00 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 Count 2 of the citation be **DISMISSED**.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 27th day of February, 2008.

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.

Detach here and submit stub with payment

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

Citation No. 06-1344