

Mailing Date: FEB 05 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1564
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-319833
v.	:	
	:	LID - 18451
PAUL KOCI	:	
KOCI'S TAVERN	:	
415 PITGAS ROAD	:	
CLARKSVILLE PA 15322-6354	:	
	:	
	:	
GREENE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-17146	:	

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

For Bureau of Enforcement
Nadia Vargo, Esquire

For Licensee
No Appearance

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 27, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Paul Koci, t/a Koci's Tavern, License Number R-AP-SS-EHF-17146 (hereinafter Licensee).

The citation contains six counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471], in that on December 13, 2005, Licensee's establishment was operated in a noisy and/or disorderly manner.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471], in that on December 13, 2005, Licensee Paul Koci was visibly intoxicated on the licensed premises.

The third count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5503 of the Crimes Code [18 Pa. C.S. §5503], in that on December 13, 2005, Licensee, by his servants, agents or employees, engaged in disorderly conduct.

The fourth count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)], in that on May 20, 2006, Licensee, by his servants, agents or employees, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The fifth count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on May 20, 2006, Licensee, by his servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The sixth count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)], in that on May 20, 2006, Licensee, by his servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

An administrative hearing was conducted on November 28, 2006, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee did not appear personally or through legal counsel.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on October 9, 2005, and completed its investigation on May 20, 2006. (Exhibit C-1)
2. The Bureau notified Licensee of the nature of the alleged violation(s) disclosed by its investigation by letter dated June 8, 2006, which was sent by certified mail and received by Licensee on June 9, 2006. (Exhibit C-2)

3. The citation was issued on June 27, 2006, and was sent by certified mail and received by Licensee on June 29, 2006. (Exhibits C-3, C-4)

4. The notice relative to the date, time and place of the evidentiary hearing was mailed to Licensee's premises on October 13, 2006, by certified mail and first class mail.

5. The aforementioned certified mailing of the notice of hearing was returned unclaimed. The first class mailing was not returned.

COUNTS 1, 2 AND 3

6. On December 13, 2005 at approximately 11:00 p.m., Paramedic Justin Beal accompanied by a fellow paramedic arrived at Licensee's premises after a call had been placed to EMS Southwest reporting that a man was experiencing chest pains at the premises. (N.T. 16-17, 41-42)

7. Upon arriving at the premises, Mr. Beal and his fellow paramedic were advised by a female bartender that the individual requiring assistance was Licensee Paul Koci who was lying on a mattress in the back room. (N.T. 17-18)

8. Upon entering the back room of the premises, Mr. Beal observed Mr. Koci and his wife and daughters attempting to assist him. While attempting to offer assistance, Mr. Koci became belligerent with Mr. Beal, began cursing, and threatened to kill him if he didn't leave. Mrs. Koci explained to Mr. Beal that Mr. Koci was on a 72-hour drinking binge and was suicidal. Mr. Beal further noted that Mr. Koci was extremely intoxicated, reeked of alcohol, was unsteady on his feet and was very belligerent and uncooperative. Mr. Beal then contacted Pennsylvania State Police in order to address the situation. (N.T. 18-20, 24-26)

9. Pennsylvania State Police Troopers Jardine and Siege arrived at approximately 11:30 p.m. in response to Mr. Beal's call for assistance at the premises, and found Mr. Koci exhibiting extreme signs of intoxication as he had red and glassy eyes, was unsteady on his feet and was cursing and very belligerent with the troopers. After making several unsuccessful attempts to calm Mr. Koci, Trooper Siege advised him of his rights and commenced an arrest. At this time, Mr. Koci swung his fist at Trooper Siege and kicked him in a drunken fashion. Troopers Jardine and Siege wrestled with Mr. Koci in order to restrain him with handcuffs. (N.T. 28-33, 39)

10. As the result of this incident, Mr. Koci was arrested and charged with public drunkenness and disorderly conduct. (N.T. 35)

11. Throughout the aforementioned incident, Licensee's premises was open for business with approximately 30 patrons present. During the course of this incident and in full view of the patrons, Mr. Koci was belligerent when interacting with the Pennsylvania State Police troopers and paramedics. Mr. Koci used profane language and was argumentative with employees and family members. (N.T. 23-25, 32-34, 38)

COUNTS 4, 5 AND 6

12. On May 20, 2006 at 2:30 a.m., Liquor Enforcement Officer J. M. Massimino arrived at Licensee's premises. Upon exiting his vehicle, Officer Massimino was advised by a man with a dog that the bar was closed. Officer Massimino replied by indicating that he wanted to get a six-pack. The man responded that she may sell you one. (N.T. 11)

13. Officer Massimino entered Licensee's premises in an undercover capacity at 2:40 a.m. and noted that music was playing however there was no one behind the bar. (N.T. 11)

14. A moment later, a female entered the bar from the rear room and asked Officer Massimino what he wanted. (N.T. 11)

15. Officer Massimino requested a six-pack of Coors Light beer. The female bartender then asked, "Are you LCB?" Officer Massimino replied in the negative and asked if he could have a bag for the beer. Officer Massimino then gave \$8.00 to the bartender, consisting of \$7.00 for the six-pack of Coors Light beer and a \$1.00 tip. (N.T. 11-13)

16. As Officer Massimino was waiting for the bartender to place his beer purchase in a bag, he observed the man he briefly spoke with prior to entering the premises approach the bar and consume from a glass of beer, which was already on the bar and had been partially consumed. Additionally, another man entered the premises and began consuming from a $\frac{3}{4}$ full bottle of Budweiser beer. (N.T. 12-13)

17. Officer Massimino then departed Licensee's premises at 2:53 a.m. in possession of his beer purchase, with the aforementioned two patrons remaining. (N.T. 13)

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has clearly established the violations as charged in Counts one through six of this citation by a 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).

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

2. On December 13, 2005, Licensee's establishment was operated in a noisy and/or disorderly manner, in violation of Section 471 of the Liquor Code.

3. On December 13, 2005, Licensee Paul Koci was visibly intoxicated on the licensed premises, in violation of Section 471 of the Liquor Code.

4. On December 13, 2005, Licensee, by his servants, agents or employees, engaged in disorderly conduct, in violation of Section 471 of the Liquor Code and Section 5503 of the Crimes Code.

5. On May 20, 2006, Licensee, by his servants, agents or employees, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code.

6. On May 20, 2006, Licensee, by his servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code.

7. On May 20, 2006, Licensee, by his servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., in violation of Section 499(a) of the Liquor Code.

PRIOR RECORD:

Licensee has been licensed since June 27, 1986, and has had six prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

Citation No. 88-1597. Fine \$2,000.00.

1. Sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m.
2. Permitted dancing during hours when the sale of alcoholic beverages is prohibited.

Citation No. 91-1824. License held in partnership with Stanley Koci. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 91-2104. License held in partnership with Stanley Koci. Fine \$1,550.00.

1. Advertised a contest to be held on the licensed premises and the award of prizes
2. Held or permitted a contest on the licensed premises with the award of prizes to the winner thereof without Board approval.
3. Failed to label beer taps properly.
4. Permitted lewd, immoral or improper entertainment.
5. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 92-0927. License held in partnership with Stanley Koci. Fine \$300.00 and one day suspension.

1. Illegal gambling (machine).

Citation No. 93-1616. License held in partnership with Stanley Koci. Fine \$350.00.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 01-2104. License held in partnership with Stanley Koci. Fine \$200.00.

1. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m.
July 15, 2001.

PENALTY:

With respect to Counts one, two, three, five and six, 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 types found in this case. As to Count four, Section 471 of the Liquor Code 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 a violation of this type.

In consideration of the fact that counts one and three of this citation arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

PAUL KOCI
Citation Number 06-1564

Moreover, in consideration of the fact that counts five and six arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

For the foregoing reasons, the following penalties shall be imposed:

Counts one and three (merged) - \$1,000.00.

Count two - \$1,000.00.

Count four - \$1,200.00.

Counts five and six (merged) - \$300.00.

ORDER:

THEREFORE, it is hereby ordered that Paul Koci, t/a Koci's Tavern, License Number R-AP-SS-EHF-17146, pay a fine of \$3,500.00 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.

PAUL KOCI
Citation Number 06-1564

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 to:

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

Jurisdiction is retained to ensure compliance with this Order.

Dated this 24th day of January, 2007.

Roderick Frisk, J.

bg

NOTE: 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.