

Mailing Date: MAY 18 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2093
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-334947
v.	:	
	:	LID - 50605
ROBERT R DREY	:	
T/A LAKEVIEW MOTEL &	:	
RESTAURANT	:	
10738 PATH VALLEY ROAD	:	
ROUTE 75	:	
FANNETTSBURG, PA 17221	:	
	:	
FRANKLIN COUNTY	:	
LICENSE NO. H-AP-SS-EHF-4481	:	
	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Andrew J. Lovette, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Robert R. Drey
Licensee

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 14, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Robert R. Drey, t/a Lakeview Motel & Restaurant (Licensee), License Number H-AP-SS-EHF-4481.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on June 3, 2006, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, eighteen (18) years of age.

An evidentiary hearing was conducted on April 18, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. I advised Licensee of his right to counsel, to cross-examine witnesses and to present testimony. Licensee acknowledged that he understood those rights and that he was prepared to go forward without an attorney. (N.T. 5-6)

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on June 21, 2006 and completed it on August 16, 2006. (N.T. 11)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on August 21, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)
3. On June 3, 2006, a woman who lives very close to the premises noticed her son coming out of the premises with a backpack and beer. She approached her son. (N.T. 38-39)
4. As she was approaching, her son was placing the beer into the backpack. The mother picked up the backpack and the rest of the beer and went into the licensed premises. She asked the barmaid whether she had sold her son the beer. The barmaid responded by asking: "Was he tall, white hat, had a Maryland license?" The mother responded in the affirmative and indicated the barmaid had just served an underage buyer. (N.T. 41-43)
5. The mother spoke to Licensee who indicated he had no idea about what happened, because he was in the kitchen. The mother left with the beer and called the State Police. (N.T. 43-44)

1. Commonwealth Exhibit No. C-2, N.T. 9.

6. The son was born on January 10, 1988. He was eighteen years old on June 3, 2006. He walked into the licensed premises, went up to the bar and displayed his true and valid Maryland Driver's license. The barmaid glanced at it after which he was allowed to purchase beer. (N.T. 74-80)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

Licensee attacked the Bureau's case via credibility. While I am not entirely convinced that the son was completely truthful regarding tangential issues, I have no reason to doubt mother's veracity. Having seen her son departing the premises with beer, mother's testimony solidifies the Bureau's case.

PRIOR RECORD:

Licensee has been licensed since February 3, 2002, and has had one prior violation (Commonwealth Exhibit No. C-5, N.T. 172):

Adjudication No. 03-1983. Fine \$2,000.00.
Sales to visibly intoxicated persons.
October 23, 2003.

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.

Although Licensee was R.A.M.P. (Responsible Alcohol Management Program) certified (effective May 4, 2005), at the time of the instant violation, Licensee is ineligible for the lower penalty parameters because of the prior Adjudication. Licensee has been R.A.M.P. recertified, effective June 8, 2006.

Liquor Code Section 471(d) [47 P.S. §4-471(d)] imposes the mandate upon me to require a licensee to become R.A.M.P. compliant where, as here, the violation is the first of this type. I am authorized to require such compliance for a period up to one year.

I impose a \$1,400.00 fine. As Licensee has voluntarily complied with Liquor Code Section 471.1 [47 P.S. §4-471.1] relating to R.A.M.P. and has been certified effective June 8, 2007 for a period of two years, I now order Licensee to remain in compliance for a period of one year from the mailing date of this Adjudication.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,400.00 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.

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, Pennsylvania 17110-9661

R.A.M.P. Requirements

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 must remain in compliance for a period of one year from the mailing date of this Adjudication.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 11th day of May, 2007.

Felix Thau, A.L.J.

pm

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.