

Mailing Date: AUG 7 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2379
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-334420
v.	:	
	:	LID - 52125
CASA MIA PIZZERIA PUB &	:	
ITALIAN RESTAURANT INC	:	
10 W 4 th ST	:	
BETHLEHEM PA 18015-1604	:	
	:	
	:	
NORTHAMPTON COUNTY	:	
LICENSE NO. R-AP-SS-8568	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.
For Licensee: Theodore J. Zeller, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 13, 2006. The citation alleges that Licensee violated §471 of the Liquor Code, 47 P.S. §4-471, on June 10, 2006, because its corporate Vice President, Secretary/Treasurer and Manager was visibly intoxicated on the licensed premises.

A hearing was held on Friday, March 30, 2007, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Anthony Spagnola is Licensee's vice president, secretary/treasurer, and manager. He is also a director of the licensed corporation and a stockholder (Board records).

2. Sergeant Edward Repynecik, Jr., has been employed by the City of Bethlehem Police Department for eighteen years. On June 10, 2006, at about 1:40 a.m., he dispatched Police Officer Benjamin Hackett to another licensed premises, the Fun House Bar, on East 4th Street near South Mill in the City of Bethlehem. Officer Hackett requested the sergeant to respond as well, and when they arrived separately at that location the two officers observed that the complaint of amplified music escaping the premises did not pertain to the Fun House Bar. The officers could not hear any music coming out of it, but they did hear music and loud people at the Casa Mia, this Licensee's premises (N.T. 10-11, 20-22).

3. The officers proceeded to the Casa Mia. There were about 30 patrons outside of the premises, the doors to which were wide open. There were bouncers at the door checking identification, and a disk jockey was providing entertainment which could be heard at least a half block away. Officer Hackett asked a door man to fetch the manager (N.T. 11-12, 22).

4. Officer Hackett spoke with Anthony Spagnola, who came out of the premises to meet him. Mr. Spagnola appeared to be intoxicated. His speech was slurred. His head was down. His eyes were about halfway closed, and red and glassy. There was a strong odor of alcohol on his breath (N.T. 15, 23).

5. Officer Hackett explained to Mr. Spagnola that they were there because of the music and that he needed to turn it down. Mr. Spagnola became angry. He demanded badge numbers and names. He leaned to within six inches of the officer, apparently trying to read his name tag. The officer had difficulty understanding his mumbled speech (N.T. 24).

6. Mr. Spagnola was in the kitchen of the premises, making pizzas, when the officers arrived. He had been working since 11:00 a.m. the previous day (N.T. 30).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Although Mr. Spagnola denied it, I am persuaded by the weight of the evidence that he had been drinking alcohol to the extent necessary for him to appear visibly intoxicated.

It is unlawful for a licensee (in the case of a corporation, this means the officers of the corporation) to drink alcohol while tending bar. However, there was no evidence that Mr. Spagnola was engaged in that activity, so his conduct did not violate 47 P.S. §4-493(28).

It is not unlawful for a person to exhibit signs of visible intoxication while in a licensed premises. The illegality arises only when a licensee serves alcohol to such a person after his or her intoxication has become visible. *See* 47 P.S. §4-493(1). There was no evidence that any employee of Licensee furnished alcohol to Mr. Spagnola.

Undoubtedly for these reasons, the Bureau's citation alleges only a violation of 47 P.S. §4-471. This necessarily means that the visible intoxication of a corporate officer on licensed premises must be "other sufficient cause" for the imposition of a penalty under that statute.

As Superior Court observed in *Commonwealth v. Lyons*, 142 Pa. Super. 54, 57, 15 A.2d 851, 852 (1940):

If the appellant had violated any liquor law, on or off the premises, no doubt would exist as to the board's right to revoke the license, but the act expressly states that that is not the only cause for which the board may take such action. It may do so "upon any other sufficient cause shown." Those words mean something. They cannot be ignored or deleted. Obviously they are placed in the statute for a definite purpose. They signify that the legislature intended to give to

the board a certain supervisory power over the conduct of a licensee after a license has been granted.

As my colleague Judge Frisk observed in the adjudication of Citation No. 99-1330, issued to Janice Kemp:

In the opinion of this court, conduct that is reasonably related to the sale of alcoholic beverages on the licensed premises for which sanctions should be imposed must include that of a licensee visibly intoxicated while tending bar and in charge of the premises, as this type of conduct jeopardizes the public welfare, health, peace and morals. In the case at bar, this court finds it reprehensible that Licensee, Janice Kemp, engaged in the sale of alcoholic beverages on her licensed premises and assumed the responsibility of operating the premises while intoxicated. Common sense dictates that a licensee, or those acting on behalf of a licensee, must be sober while carrying out responsibilities on the premises. Moreover, the sobriety of the licensee or those individuals involved in the active operation of the premises is essential to insure that the statutory requirements of the liquor laws of this Commonwealth are strictly followed. See: *BLCE v. Courtney, Inc.*, II OALJ Sel. Op. 205.

In the case of *Commonwealth v. Koczvara*, 155 A.2d 825 (Pa. 1959), the Pennsylvania Supreme Court stated:

Because of the peculiar nature of this business, one who applies for and received permission from the Commonwealth to carry on the liquor trade assumed the highest degree of responsibility to his fellow citizens. As the licensee of the Board, he is under a duty not only to regulate his own personal conduct in a manner consistent with the permit he has received, but also to control the acts and conduct of any employee to whom he entrusts the sale of liquor. Such fealty is the **quid pro quo** which the Commonwealth demands in return for the privilege of entering the highly restricted and, what is more important, the highly **dangerous** business of selling intoxicating liquor.

In the present case, as noted above, there is no evidence that Mr. Spagnola was tending bar or otherwise serving alcoholic beverages. I find that this makes no difference in an “other sufficient cause” case. Mr. Spagnola’s management responsibilities made it necessary that he remain sober while on duty.

PRIOR RECORD:

Licensee has been licensed since December 3, 2003, and has had one prior violation:

Citation No. 05-0002. \$2,050.00 fine.

1. Failed to require patrons to vacate the premises by the required time. September 19 and October 2, 2004.
2. Sales between 2:00 a.m. and 7:00 a.m. October 2, 2004.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. October 2, 2004.
4. Noisy and/or disorderly operation. May 6, August 28 and September 1, 2004.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Casa Mia Pizzeria Pub & Italian Restaurant, Inc., License No. R-AP-SS-8568, shall pay a fine of three hundred dollars (\$300.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction 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 to:

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

Dated this 31st day of July, 2007.

David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.