

Mailing Date: NOV 20 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-2694
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-321025
v.	:	
	:	LID - 16474
ROB FAM, INC.	:	
T/A LIBERTY SQUARE CAFE	:	
447 N. NINTH ST.	:	
LEBANON, PA 17046-3461	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. R-AP-SS-14014	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Patrick M. McHugh, Esquire
The 8040 Roosevelt Bldg.
8040 Roosevelt Blvd.
Suite 214
Philadelphia, PA 19152

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 30, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Rob Fam, Inc., t/a Liberty Square Cafe (Licensee), License Number R-AP-SS-14014.

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 September 13, 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) visibly intoxicated male patron.

An evidentiary hearing was conducted on October 9, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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 October 27, 2005 and completed it on October 20, 2006 (Commonwealth Exhibit No. B-1, N.T. 11). During that investigation, Bureau Enforcement Officers visited the premises seventeen times, in addition to an administrative inspection. (Commonwealth Exhibit No. B-1, N.T. 11; 36-39)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 3, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 11)

3. A Bureau Enforcement Officer entered the premises on September 13, 2006 in an undercover capacity at about 6:30 p.m. The Officer noticed one patron out of a group of four. His speech was so slurred that she could barely understand what he was saying. The customer went over to a second customer who was situated near the Officer. The visibly intoxicated patron began talking to the second customer. The Officer could not understand what he was saying as his speech was slurred. (N.T. 18-24)

4. The visibly intoxicated patron was encouraged to return to his former position with the three other individuals. As he walked, the Officer noted the customer was slow and purposeful. He was trying to keep his balance as he walked back to his original seat. When he returned to the barstool, instead of sitting on it, the customer leaned across the barstool towards the bar. He was trying to put out a cigarette. It took him several attempts to douse the cigarette. The ashtray was directly in front of him. The customer kept stabbing at the bar counter to put out the cigarette. He eventually pulled the ashtray towards him and put the cigarette out. The four individuals at the end of the bar which included the visibly intoxicated patron became loud. The barmaid looked down towards them and said: "Do I have to come down there?" She placed fresh alcoholic beverages in front of all the four patrons which included the visibly intoxicated patron. (N.T. 24-26)

1. Commonwealth Exhibit No. B-2, N.T. 12.

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:

I accord the Officer's observations and conclusions significant weight.

PRIOR RECORD:

Licensee has been licensed since June 17, 1988, and has had two prior violations (Commonwealth Exhibit No. B-3):

Adjudication No. 01-2079. Fine \$450.00.
Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines).
January 16, May 19, June 3, 30, July 16, August 23, 29 and 30, 2001.

Adjudication No. 03-0490. Fine \$100.00.
Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises.
July 28, 2002.

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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], 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.

A long time ago, I remarked if one were to look for poison ivy in a rose garden with enough vigor and zeal, one would likely find some. In applying this metaphor, I am not at all suggesting that serving a visibly intoxicated patron is a frivolous or minor infraction. On the contrary, I look unkindly on such behavior.

Nonetheless and in the context of this investigation, which lasted a few days short of a year during which the Bureau registered seventeen visits in addition to an administrative inspection finding only one violation worthy of administrative processing in an industry which is highly regulated, one may draw the conclusion Licensee is operating well above average.

It is true, in giving license the Commonwealth expects every licensee to operate without any violations whatsoever. Of course, this is an ideal to which we strive. The reality is quite different; it is a standard of reality that I apply when I conclude Licensee is exercising a high level of diligence. Accordingly, I impose the minimum fine of \$1,000.00.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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.

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 is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 7th day of November, 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.

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 to:

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

Citation No. 06-2694