

Mailing Date: SEP 20 2007

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF :  
LIQUOR CONTROL ENFORCEMENT :

Citation No. 06-2986

v. :

Incident No. W04-341683

BOTTOMS UP SALOON INC :  
T/A BOTTOMS UP SALOON :  
314 HELEN STREET :  
MCKEES ROCKS PA 15136-2873 :

LID- 45231

ALLEGHENY COUNTY :  
LICENSE NO. R-AP-SS-13477 :

**BEFORE:** JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement  
Michael C. Nickles, Esquire

For Licensee  
Charles L. Caputo, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on January 12, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Bottoms Up Saloon, Inc., T/A Bottoms Up Saloon, License Number R-AP-SS-13477 (hereinafter Licensee).

The citation charges Licensee with violation of Sections 491(1), 492(2) and 493(16) of the Liquor Code [47 P.S. §4-491(1), §4-492(2) and §4-493(16)], in that on November 15, 2006, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages after its Restaurant Liquor License was suspended at Citation No. 06-1186.

The investigation which gave rise to the citation began on October 18, 2006 and was completed on December 1, 2006. The notice of violation letter was mailed to Licensee on December 12, 2006.

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An evidentiary hearing was held on this matter on July 24, 2007, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee holds Restaurant Liquor License R-AP-SS-13477 in Allegheny County, Pennsylvania. (N.T. 4)

2. Citation No. 06-1186 suspended Licensee's Liquor license for six days beginning at 7:00 a.m. on Monday, November 13, 2006 and ending at 11:00 a.m. on Sunday, November 19, 2006. (N.T. 5, 48, Ex. C-5)

3. On November 13, 14 and 15, 2006, an enforcement officer visited the licensed premises and found it not operating. (N.T. 7, 9)

4. On Wednesday, November 15, 2006, at approximately 4:50 p.m., two local police officers and a police captain arrived at the licensed premises and found newspapers covering the windows, the doors locked and observed a female inside with a bottle of beer in her hand. (N.T. 10, 15-16, 24-26, 35, 38-39)

5. The police captain knocked on the window, and the woman opened the door and told him she was cleaning the place. (N.T. 11-12, 15-16)

6. The police captain found approximately seven other people at the bar with bottles of beer, mixed drinks and dollar bills and change in front of them, and two females who were cleaning. (N.T. 11-14, 18-19)

7. The police captain found an open doorway leading from the licensed premises through the kitchen, to a laundromat in the rear of the building. (N.T. 16-17)

8. The police officer observed that the Laundromat was conducting business with people doing their laundry. (N.T. 22)

9. At approximately 5:00 p.m., Licensee's president, Steven Taylor, arrived and stated that they were there to clean the premises. (N.T. 14)

10. Licensee sells beer in green bottles but no cans of beer, except in 12-packs to go. (N.T. 66-67)

11. The police officers confiscated a blue bag containing currency and coins which Licensee's president testified was for the purpose of providing change for the laundromat. (N.T. 24-26, 52)

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12. At approximately 5:30 p.m., the police officers departed the premises with Licensee's president and two female employees remaining. (N. T. 28, 40-41)

13. On Thursday, November 16, 2006, the enforcement officer received a McKees Rocks Police report of their visit to the licensed premises. (N.T. 8)

14. On Monday, November 20 and Friday, December 1, 2006, the enforcement officer spoke with police officer Price and Captain Gramz about their visit to the licensed premises. (N.T. 8, 9)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

Counsels for the Bureau and Licensee submitted briefs with addenda in this case.

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d (Pa. Cmwlth. 1982). The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black's Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

At the hearing held on the matter, the enforcement officer testified as to conducting suspension checks at the licensed premises and finding it closed for business.

A McKees Rocks police captain and two police officers testified as to visiting the licensed premises on November 15, 2006, and finding seven people at the bar in possession of beer and mixed drinks with money in front of them and two employees present. Licensee's president arrived and stated they were there to clean.

Licensee's president testified that four of the seven people at the bar were there to help himself and his two female employees empty and clean the coolers and other equipment in the establishment, that the soft drink and ice dispensing equipment were disassembled, that the currency bag was for the laundromat, and he speculated that the three uninvited individuals obtained their alcoholic beverages in a nearby establishment and entered through the open laundromat. (N.T. 50, 53, 54)

I find the testimony the Bureau's witnesses to be more credible. Because money was found in the bar in front of several persons who were in possession of bottles of beer, I find it more likely than not that alcoholic beverages were furnished to patrons while the licensed premises was under suspension. As such, the citation is sustained.

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PRIOR RECORD:

Licensee has been licensed since March 20, 2000, and has six (6) prior violations, to wit:

Citation No. 03-0966. Fine \$75.00.

1. Issued worthless checks in payment for malt or brewed beverages.  
April 9, 2003.

Citation No. 03-1856. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages.  
September 24, 2003.

Citation No. 05-0559. Fine \$600.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines).  
December 30, 2004 and February 16, 2005.

Citation No. 05-1879. Fine \$1,000.00 Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines).  
May 13 and July 13, 2005.

Citation No. 06-1186. Fine \$1,000.00 and 6 days suspension.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machines and sports pools).  
January 18 and April 17, 2006.

Citation No. 06-2215. Fine \$1,450.00 and 1 day suspension.

1. Sold alcoholic beverages during a time when your restaurant liquor license was suspended.  
August 14 and 15, 2006.
2. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension.  
August 14 and 15, 2006.

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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.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudication No's. in combination with this citation, require that license revocation or suspension be included as part of the penalty: 05-0559, 05-1879, 06-1186 and 06-2215.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a two (2) day suspension will be imposed as the penalty in this case:

ORDER:

THEREFORE, it is hereby ordered that the Restaurant Liquor License of Bottoms Up Saloon, Inc., T/A Bottoms Up Saloon, License Number R-AP-SS-13477, be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m., on Monday, October 22, 2007, and **ENDING** at 7:00 a.m. on Wednesday, October 24, 2007.

Licensee is directed on Monday, October 22, 2007, at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on Wednesday, October 24, 2007, at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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

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**JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.**

Dated this 13<sup>th</sup> day of September, 2007.

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Robert F. Skwaryk, J.

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**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.**