

Mailing Date: SEP 14 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-3020
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-336354
v.	:	
	:	LID - 55060
RONALD L. BARRICK	:	
T/A LOG CABIN INN	:	
581 OLD LIMEKILN LN.	:	
NEWPORT, PA 17074-7610	:	
	:	
	:	
PERRY COUNTY	:	
LICENSE NO. R-AP-SS-EHF-21075	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 4, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Ronald L. Barrick, t/a Log Cabin Inn (Licensee), License Number R-AP-SS-EHF-21075.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on August 9, 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.

The second count charges Licensee with violations of Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §5512 and/or §5513] which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on July 21, August 9, 19, September 13, 16, October 5, 2006, and divers occasions between July 1 and October 5, 2006, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on his licensed premises.

The third count charges Licensee with violations of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code 5.41]. The charge is that from March 1 through October 4, 2006, Licensee, by servants, agents or employes, operated his licensed establishment without a valid health permit or license.

An evidentiary hearing was conducted on August 14, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee did not appear personally or have any representation.

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

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on July 20, 2007 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was returned as being marked unclaimed. (N.T. 4-5)

2. On July 20, 2007, I issued a Pre-Hearing Order directing Licensee to submit his pre-hearing memorandum to this office. That Order reiterated the date, time and place of hearing. (N.T. 4-5)

1. Commonwealth Exhibit No. C-3, N.T. 29.

3. The Bureau began its investigation on July 18, 2006 and completed it on November 29, 2006. (N.T. 9)

4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on December 13, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 29)

Count No. 1:

5. While the Officer was present in an undercover capacity on August 9, 2006, she noticed a patron who staggered as he walked. The patron sat next to the Officer. While he spoke to the Officer, his speech was slurred. The bartender provided the patron a Jack Daniel's and a Budweiser beer. While doing so, the bartender advised the patron that it was his last two. This occurred at about 9:45 p.m. The customer was "bumming" cigarettes. He advised the Officer that he owned the place and that he did not have to pay for anything. He swayed back and forth in his seat. He was a participant in the Texas Hold'em Tournament. While in this condition, at 10:05 p.m., the customer was served another beer. (N.T. 18-19)

6. The patron received an additional service of an alcoholic beverage at 10:20 p.m. At 10:35 p.m., the patron requested a six pack of beer to go which was served him by one of the bartenders. (N.T. 19-21)

Count No. 2:

7. On July 21, 2006, a Bureau Enforcement Officer in an undercover capacity entered the subject premises in an undercover capacity. The Officer noted a video slot machine with Harley Davidson identification on it. The video slot machine was the winning prize in a raffle. (N.T. 11-16)

8. On August 9, 19, September 13, 16, October 5, 2006, the Officer noted the presence of the video slot machine as a prize in a raffle. (N.T. 16-17; 22-23)

9. The Officer interviewed the employes and was advised the expectation was to sell about 1,500 tickets at \$5.00 a piece and that the ticket sales were not going too well. (N.T. 26-28)

Count No. 3:

10. Licensee's health permit expired on February 28, 2006. Licensee provided the necessary payment on October 5, 2006, and on that date was issued a new permit.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2 and 3 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since July 18, 2005, and has had no prior violations.

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 Count No. 1 and 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 Count Nos. 2 and 3 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.

Consistent with my policy of not interposing any mitigating factors when licensees fail to appear or obey process, I impose:

- Count No. 1 - \$1,500.00 fine.
- Count No. 2 - \$500.00 fine.
- Count No. 3 - \$300.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$2,300.00 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 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 September, 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.