

Mailing Date: SEP 20 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-0125
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-343297
v.	:	
	:	LID - 46128
BOOMERHANGS, INC.	:	
T/A COLONIAL LOUNGE	:	
580 N. MOUNTAIN ROAD	:	
HARRISBURG, PA 17112-2368	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-19270	:	

BEFORE: JUDGE THAU

APPEARANCES:

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

For Licensee
Frank C. Sluzis, Esquire
2148 Deodate Road
Elizabethtown, PA 17022

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 25, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Boomerhangs, Inc., t/a Colonial Lounge (Licensee), License Number R-AP-SS-19270.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Sections 401(a) and 407(a) of the Liquor Code [47 P.S. §4-401(a) and §4-407(a)]. The charge is that on November 25, 2006, Licensee, by servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

The second 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 November 25, 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 August 14, 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 November 14, 2006 and completed it on December 28, 2006. (N.T. 9)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on January 12, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)

Count No. 1:

3. During the Officer's visit of November 25, 2006, he observed a customer enter the premises and retrieve three, twelve packs of twelve ounce cans of beer from a cooler. The bartender rang the sale up in one sale. The customer was advised to carry each twelve pack of beer out separately. (N.T. 20-21)

1. Commonwealth Exhibit No. C-2, N.T. 5.

Count No. 2:

4. On November 25, 2006, a Bureau Enforcement Officer entered the premises at 10:15 p.m., in an undercover capacity. The Officer took a position at the bar. He noticed a patron who was speaking louder than most of the customers. His speech was slurred. When he stood, he swayed. The Officer focused his attention on this customer for approximately one half hour before he was served a Seagram's Seven and soda. At 10:56 p.m., he finished the drink. He told his female companion that he was drunk and that he needed to sit down. (N.T. 11-16)

5. The patron had difficulty with balance. His gait was irregular. He sat down in a booth with his feet hanging out. Several times he laid his head back across the booth. It appeared as if he was asleep. At 11:03 p.m., he stood up and had difficulty in doing so as his balance was unsteady. While at the bar, he ordered another Seagram's Seven and seven-up. He was loud and his speech was slurred. The bartender served the customer the mixed drink. (N.T. 17-20)

CONCLUSIONS OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since June 13, 2000, and has had one prior violation (Commonwealth Exhibit No. C-3, N.T. 31):

Adjudication No. 03-0715. Fine \$1,200.00.

1. Sales between 2:00 A.M. and 7:00 A.M.
March 1 and 15, 2003.
2. Failed to require patrons to vacate the
premises not later than one-half hour
after the required time.
March 15, 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 \$50.00 or more than \$1,000.00 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 2 in this case.

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.

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 July 30, 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.

I impose:

Count No. 1 - \$50.00 fine.
Count No. 2 - \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,050.00 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 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.