

Mailing Date: JUL 03 2008

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

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| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 07-0181C |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W01-344577 |
| v. | : | |
| | : | LID - 55391 |
| C & D TRIANGLE TAVERN INC | : | |
| T/A TRIANGLE TAVERN | : | |
| 1338-40 S 10 th STREET | : | |
| PHILADELPHIA PA 19147-5619 | : | |
| | : | |
| PHILADELPHIA COUNTY | : | |
| LICENSE NO. R-AP-SS-OPS-764 | : | BEFORE: JUDGE SHENKLE |

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 20, 2007. There are two counts in the citation.

The first count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on December 14, 2006, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The second count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on December 21, 2006, by selling, furnishing, and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one male minor, twenty years of age.

A hearing was held on April 23, 2008, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On December 14, 2006, Liquor Enforcement Officers Chante McKoy and Julie Kohler entered the licensed premises in an undercover capacity at about 9:30 p.m. There were approximately eight patrons being served by one bartender. Several of the male patrons approached the officers, who are attractive women. They were also the only apparently unattached women in the premises at the time (N.T. 4-5, 37-38).

2. One of the men talking to the officers called himself Gabe. He explained to them "that I'm not usually --- I'm usually a nice guy. I'm not usually this drunk." (N.T. 6-7, 38).

3. Gabe had blinking, bloodshot eyes, slurred his speech, and walked with a staggering gait. There was a strong odor of alcohol on him. For a couple of minutes, Gabe climbed up on the bar top and danced and lip-synched the Marvin Gaye song "Let's Stay Together," directing his performance primarily to the officers. Gabe almost slipped and fell while doing this (N.T. 18-21, 39).

4. After about an hour, Gabe spoke with the bartender, who prepared mixed drinks called "Mind Erasers." These contain vodka, soda, and Kahlua. Ralphie, the bartender, served these drinks to Gabe and the officers, and was present when Gabe remarked that the licensed establishment was like a second home to him and that he and Ralphie were very close (N.T. 36).

5. Liquor Enforcement Officer Libby Hess entered the licensed premises at 9:30 p.m. on December 21, 2007, as part of the age compliance program conducted by the Bureau. At about 9:40 p.m. a man whose birth date was November 28, 1986, entered the premises and stood at the bar. The bartender approached him and served a bottle of beer, for which the minor paid \$2.75. No one questioned the minor's age. When the bartender turned away the minor left the premises without touching the bottle of beer (N.T. 44-47, Exhibit B-3).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The statement "that I'm not usually --- I'm usually a nice guy. I'm not usually this drunk" was objected to as hearsay. It might be argued that the statement fits within an exception to the hearsay rule; i.e., that it is a statement of present sensory impression. However, since I find it unnecessary to rely upon the statement for a resolution of this case, I will sustain the objection on the basis of *Walker v. Unemployment Comp. Board of Review*, 367 A.2d 366 (Pa.Cmwlth.Ct. 1976).

The observations reported by the liquor enforcement officers were credible and sufficient to persuade me that Gabe was visibly intoxicated at the time he ordered Mind Erasers for himself and the officers. In reaching this conclusion I place no weight on the statement of Gabe relating to his own sobriety (which was not broadcast to others in the premises in any event). Neither does the circumstance that Gabe said he was close to Ralphie, the bartender, affect my decision.

I knew from having presided at a number of hearings in which he appeared that the 20 year old man who purchased beer on December 21, 2006, was cooperating with the Bureau's age compliance enforcement program. That is, I recognized his face from the photograph maintained by the Department of Transportation as a part of his Driver's License record, just as Officer Hess did. This record was properly received in evidence as required by 75 Pa.C.S. § 6328.

PRIOR RECORD:

Licensee has been licensed since November 4, 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 in the \$1,000.00 to \$5,000.00 range, or both, for violations of this type. In light of Licensee's status as a first offender, the penalty for each count will be the minimum fine of \$1,000.00, plus mandatory certification under 47 P.S. §4-471.1.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, C & D Triangle Tavern, Inc., t/a Triangle Tavern, License No. R-AP-SS-OPS-764, shall pay a fine of two thousand dollars (\$2,000.00) 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.

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. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; www.lcb.state.pa.us) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (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. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

Failure to comply with this order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d).

Dated this 17th day of June, 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.

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