

Mailing Date: NOV 07 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1005
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-347657
v.	:	
	:	LID - 56861
MONTENEGRO RESTAURANT	:	
BAR, INC.	:	
35 E. DIAMOND AVE.	:	
HAZLETON, PA 18201-5135	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-2704	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
8320 Schantz Road, Second Floor
Breinigsville, PA 18031

For Licensee
Ex-Parte

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 14, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Montenegro Restaurant Bar, Inc. (Licensee), License Number R-AP-SS-EHF-2704.

The citation¹ charges Licensee with violations of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that January 26, 27 and February 9, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) male minors and one (1) female minor, nineteen (19) to twenty (20) years of age.

An evidentiary hearing was conducted on October 3, 2007 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee did not appear personally or have 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 August 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. 5)
2. On August 20, 2007, I issued a Pre-Hearing Order directing Licensee to submit its pre-hearing memorandum to this office. That Order reiterated the date, time and place of hearing. (N.T. 5)
3. The Bureau began its investigation on January 26, 2007 and completed it on March 21, 2007. (N.T. 6)
4. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on March 29, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)
5. On January 26, 2007, two Bureau Enforcement Officers attempted to enter the premises in an undercover capacity at approximately 8:15 p.m. They were stopped at the door by a doorman who told them the premises was closed for a private party. The Officers departed. At 9:25 p.m., the Officers returned with additional Enforcement Officers, State Police Troopers and Hazleton Police Officers. (N.T. 10)

1. Commonwealth Exhibit No. C-2, N.T. 8.

6. The Officers discovered a twenty year old (born January 16, 1987) in possession of a bottle of beer at the bar. (N.T. 11-12)

7. The young man was taken into custody. His fingerprints were taken at the Hazleton Police Department. Through the fingerprinting system, the Hazleton Police verified the minor was born on January 16, 1987. Subsequently, the young man admitted he was twenty years old. He was cited for Underage Drinking and paid a fine. (N.T. 15-19)

8. On January 27, 2007, a Hazleton Police Officer was dispatched to the area of the premises at approximately 1:30 a.m. He was in a marked vehicle and in full uniform. The Officer observed a young man outside the premises who was clearly intoxicated. (N.T. 22)

9. The young man was born on February 9, 1987 and was nineteen on the date in question. He just came from the licensed premises where he consumed alcoholic beverages. He was part of a private party celebrating a birthday. (N.T. 25-27)

10. A Hazleton Police Officer was in the area of the premises in the early morning hours of February 9, 2007. He was in a marked police vehicle and in full uniform. He observed a young lady exiting from the premises. (N.T. 23-24)

11. The young lady was born on December 13, 1987 thus making her nineteen years old on the date in question. She arrived at the premises a few minutes after midnight. She was served three beers during her visit. She was not required to show any proof of age. (N.T. 42-47)

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.

PRIOR RECORD:

Licensee has been licensed since October 31, 2006, 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 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.

Although this is Licensee's first violation, it is quite apparent Licensee is unwilling to monitor the patrons who enter the premises. Moreover, Licensee has failed to appear and obey process. Accordingly, I impose a \$5,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$5,000.00 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.

However, since Licensee's Restaurant liquor license expired August 31, 2007 and is in an inactive status so much of this Adjudication as it relates to mandatory compliance with Liquor Code Section 471.1, pertaining to Responsible Alcohol Management, is deferred pending renewal of Licensee's license at which time I will review the Adjudication for further appropriate action.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 26th day of October, 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

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