

Mailing Date: DEC 26 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1027
LIQUOR CONTROL ENFORCEMENT	:	Citation No. 07-1411
	:	Incident No. W03-349234
	:	Incident No. W03-348620
v.	:	
	:	LID – 14296
	:	
	:	As Consolidated Under
	:	Citation No. 07-1027
GUTSHALL'S CAFÉ, INC.	:	
293 EAST MAIN STREET	:	
MIDDLETOWN, PA 17057-2230	:	
	:	
	:	
	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-10280	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
Mark R. Demko  
Manager

## ADJUDICATION

### BACKGROUND:

This proceeding arises out of two citations that issued by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Gutshall's Café, Inc. (Licensee), License Number R-AP-SS-10280.

#### **Citation No. 07-1027<sup>1</sup>**

This citation was issued on May 24, 2007 and contains three counts.

The first count charges Licensee with violations of Section 471(d) of the Liquor Code [47 P.S. §4-471(d)]. The charge is that from February 9 through March 20, 2007, Licensee failed to comply with the Order of the Administrative Law Judge at Citation No. 06-0331C mandating Responsible Alcohol Management training.

The second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on March 6, 2007, Licensee, by servants, agents or employes, failed to keep records on the licensed premises.

The third count charges Licensee with a violation of Section 467 of the Liquor Code [47 P.S. §4-467]. The charge is that on March 6, 2007, Licensee, by servants, agents or employes, failed to constantly and conspicuously expose Restaurant Liquor License under a transparent substance on its licensed premises.

---

1. Commonwealth Exhibit No. C-3, 07-1027, N.T. 12.

**Citation No. 07-1411<sup>2</sup>**

This citation was issued on July 5, 2007 and contains two counts.

The first count charges Licensee with violations of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on January 20, 21, February 16 and 17, 2007, and divers other occasions between September 2006 and February 17, 2007, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor, twenty (20) years of age.

The second count charges Licensee with violations of Section 493(14) of the Liquor Code [47 P.S. §4-493(14)]. The charge is that on January 20, 21, February 16 and 17, 2007, and divers other occasions between September 2006 and February 17, 2007, Licensee, by servants, agents or employes, permitted one (1) female minor, twenty (20) years of age, to frequent its licensed premises.

An evidentiary hearing was conducted on November 14, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee was represented by its Manager, Mr. Mark Demko.

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 February 10, 2007 and completed it on May 22, 2007. (Commonwealth Exhibit No. C-1, 07-1027 and 07-1411, N.T. 11; 53)

2. The Bureau sent notices of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 20, 2007 and June 4, 2007. The notices alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 07-1027 and 07-1411, N.T. 11; 53)

---

1. Commonwealth Exhibit No. C-3, 07-1411, N.T. 53.

**Citation No. 07-1027**

Count No. 1:

3. Pursuant to Adjudication No. 06-0331C, Licensee was required to be in full compliance with R.A.M.P., on or before February 7, 2007. (N.T. 14-15)

4. Licensee failed to acquire R.A.M.P. Certification for thirteen months and, as of the hearing date, has yet to comply. (N.T. 42-43)

Count No. 2:

5. The Officer questioned the Manager where Licensee's financial records were. The Manager indicated they were not maintained on the licensed premises. (N.T. 31-32)

Count No. 3:

6. During a routine inspection conducted by a Bureau Enforcement Officer on March 6, 2007, the Officer discovered the subject Restaurant liquor license was obscured by a television. The Officer had to ask Licensee's Manager where the license was. (N.T. 22)

**Citation No. 07-1411, As Consolidated Under Citation No. 07-1027**

Count Nos. 1 and 2:

7. On January 20, 2007, a twenty year old went to the licensed premises. She began frequenting the premises sometime in September, 2006, when she ordered an alcoholic beverage. She was never questioned as to age. She visited the premises every other weekend from that first visit in September, 2006 to January 20, 2007. Her habit was to arrive around 9:00 p.m. and stay until 2:00 a.m., the following morning. During her visits she drank alcoholic beverages. (N.T. 78-84)

8. The young lady specifically remembers being at the premises on February 16 and 17, 2007, representing one visit extending beyond midnight and drinking alcoholic beverages. (N.T. 89-90)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

**Citation No. 07-1027**

2. Count Nos. 1, 2, 3, are **sustained** as charged.

**Citation No. 07-1411, As Consolidated Under Citation No. 07-1027**

3. Count Nos. 1 and 2 are **sustained** as charged.

DISCUSSION:

**The Two Citations Arise Out of One Investigation**

Our Federal and State Constitutions as well as our statutes are never trumped by administrative expediency. Instantly, I am advised investigations regarding failure to comply with R.A.M.P. are administratively accounted for as a separate investigation and citation.

Counsel based the argument supporting separating R.A.M.P. investigations from others on the necessity to expedite R.A.M.P. cases. The Bureau's investigative conduct belies that position. Were the argument supported by appropriate action, there would be a very short investigation without other charges being brought. In fact, the only investigation needed is to verify the records of the Pennsylvania Liquor Control Board regarding R.A.M.P. There is no need whatsoever to engage in any on premises visit.

Both citations involve overlapping investigative periods. The investigators in both matters shared information. I conclude the two citations arise out of one investigation.

PRIOR RECORD:

Licensee has been licensed since August 8, 1988, and has had eleven prior violations (Commonwealth Exhibit No. C-5, N.T. 36):

Adjudication No. 91-1315. Fine \$1,500.00 and 7 days suspension.

1. Sales between 2:00 a.m. and 7:00 a.m.
2. Aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

Adjudication No. 94-1394. Fine \$500.00.  
Sales to a visibly intoxicated person.

Adjudication No. 96-1752. Fine \$750.00.  
Sales to a visibly intoxicated person.  
June 29, 1996.

Adjudication No. 97-0418. 2 days suspension.

1. Sales to a visibly intoxicated person.  
December 14, 1996.
2. Sales between 2:00 a.m. and 7:00 a.m.  
December 14, 1996.

Adjudication No. 97-1739. Fine \$500.00 and 4 days suspension.  
Sold alcoholic beverages after its restaurant liquor license  
expired and had not been renewed.  
March 1 through July 2, 1997.

Adjudication No. 98-1330. Fine \$1,000.00 and 3 days suspension.  
Fine not paid and license suspended 1 additional day and thereafter  
until fine paid.

1. Sales to a minor.  
February 14, April 17, 1998 and divers other  
occasions from November 1997 to April 17, 1998.
3. Minor frequenting.  
February 14, April 17, 1998 and divers other  
occasions from November, 1997 to April 17, 1998.

Adjudication No. 01-2087. 10 days suspension.

1. Sold alcoholic beverages after your Restaurant liquor license expired and had not been renewed and/or validated.  
Divers occasions from March 1, 2001 until May 23, 2001.
2. Operated the licensed establishment without a valid Health Permit or license.  
February 5, July 12, 2001 and divers occasions from December 1, 2001 until July 12, 2001.
3. Sales to a minor.  
July 12, 2001.
4. Minors frequenting.  
July 12, 2001.
5. Failed to keep on the licensed premises and/or provided an authorized employee of the Enforcement Bureau access to or the opportunity to copy complete and truthful records covering the operation of the licensed business.  
July 25, August 1, 21 and 22, 2001.

Adjudication No. 04-0887. Fine \$1,200.00, 4 days suspension with thereafter conditions.

1. Not a bona fide restaurant in that food items were insufficient and/or failed to provide food upon request.  
April 12, 2004.
2. Operated the licensed establishment without a valid health permit or license.  
December 1, 2003 to January 5, 2004.
3. Sales after the restaurant liquor license expired and had not been renewed and/or validated.  
March 15, 2004 and divers occasions from March 1 to March 18, 2004.

Adjudication No. 06-0331. Fine \$1,500.00 and RAMP training.  
Sales to a minor.  
November 10, 2005.

Adjudication No. 06-0412. 7 days suspension.  
Sales to a minor.  
January 29, 2006.

Adjudication No. 06-2001. \$1,500.00 and 3 days suspension.  
Sales to a visibly intoxicated person.  
July 6, 2006.

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 Nos. 1, 2 and 3 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 Nos. 4 and 5 in this case as consolidated.

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 Adjudications (04-0887 – Count No. 3, 06-0331, 06-0412 and 06-2001), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

I impose:

Count No. 1 - \$500.00 fine and one day suspension and continuing  
thereafter until Licensee receives R.A.M.P. Certification.  
Count No. 2 - \$150.00 fine.  
Count No. 3 - \$150.00 fine.  
Count Nos. 4 and 5 – merged - \$2,500.00 and three days suspension.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year from the date Licensee complies with this Adjudication.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$3,300.00 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.

### **Imposition of Suspension**

IT IS FURTHER ORDERED that the Restaurant liquor license (including all permits) of Gutshall's Café, Inc., License No. R-AP-SS-10280, be suspended for a period of four days, **BEGINNING** at 7:00 a.m., on Tuesday, February 19, 2008, and continuing thereafter until Licensee has obtained R.A.M.P. Certification. A copy of the Certification is to be returned to the Office of Administrative Law Judge, Pennsylvania Liquor Control Board, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania 17110-9661. A copy of the Certification is to be sent to Thomas M. Ballaron, Assistant Counsel, Bureau of Liquor Control Enforcement, Pennsylvania State Police, 3655 Vartan Way, Harrisburg, Pennsylvania.

IN THE EVENT LICENSEE RECEIVES R.A.M.P. CERTIFICATION WITHIN 30 DAYS OF THE MAILING DATE OF THIS ADJUDICATION, ONE DAY OF THE FOUR DAYS SUSPENSION WILL BE VACATED.

Licensee is directed, on Tuesday, February 19, 2008, at 7:00 a.m., to place a 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 MAY NOT RESUME OPERATION OF THE LICENSED PREMISES UNTIL FURTHER ORDER BY THE ADMINISTRATIVE LAW JUDGE.**

### **R.A.M.P. Requirements**

IT IS FURTHER ORDERED that once Licensee complies with the requirements set forth in Liquor Code Section 471.1 pertaining to Responsible Alcohol Management and receives Certification, Licensee must remain in compliance for a period of one year from the date Licensee complies with this Adjudication.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 18th day of December, 2007.

\_\_\_\_\_  
Felix Thau, A.L.J.

pm

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 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

Citation No. 07-1027, As Consolidated

**CERTIFICATION**

Citation No. 07-1027, As Consolidated

---

We, Gutshall's Café, Inc., License No. R-AP-SS-10280, certify that we have received R.A.M.P. Certification on \_\_\_\_\_.

We Gutshall's Café, Inc., further acknowledge that the Bureau of Liquor Control Enforcement has been sent a copy of all documents as ordered.

We, the above licensee [or authorized officer's thereof], under penalty of law [18 Pa. C.S. §4904, relating to unsworn falsification to authorities] acknowledge that We are signing and executing this document as the authorized act and deed of the licensee. We certify that the foregoing is true and correct.

\_\_\_\_\_  
Print Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Original copy of Certification to be sent to: Office of Administrative Law Judge, Pennsylvania Liquor Control Board, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania 17110-9661.

A copy of Certification to be sent to: Thomas M. Ballaron, Assistant Counsel, Bureau of Liquor Control Enforcement, Pennsylvania State Police, 3655 Vartan Way, Harrisburg, Pennsylvania 17110.

**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.**