

Mailing Date: APR 28 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1410
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-350852
v.	:	
	:	LID - 33884
POPPE-REED, INC.	:	
T/A BEANIE'S	:	
78-80 W. MAIN ST.	:	
MOUNT JOY, PA 17552-1323	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-13790	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
LICENSEE: STEPHEN W. CODY, ESQUIRE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on June 21, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against POPPE-REED, INC., License Number R-AP-13790 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on March 31, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated female patron.

The investigation which gave rise to the citation began on March 26, 2007 and was completed on May 21, 2007; and notice of the violation was sent to Licensee by Certified Mail on May 31, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on February 23, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On March 31, 2007 at 5:52 p.m. an officer of the Bureau entered the licensed premises (N.T. 7).

2. Upon entry the officer observed that there were seven patrons at the bar counter being served by a male bartender heard to be called Dave (N.T. 7).

3. The officer took a seat at the bar counter. His attention was immediately drawn to a female patron who was seated at the bar counter approximately 12-15 feet from him. She was very loud. Her speech was slurred, and she was shouting profanities. She swayed back and forth and side to side on her barstool, and she was giving patrons the middle finger for no apparent reason. She was also moving her arms about in an uncoordinated manner (N.T. 7-8).

4. The officer determined that the female patron was on the premises with her husband. A short time later, the husband left the premises (N.T. 8-9).

5. Once the husband of the female patron left the premises, the female patron began conversing with everybody. Her speech continued to be slurred. She began to pass her cell phone around to all the patrons at the bar counter. She wanted to show these patrons pictures she had of her pets, and also she wanted the patrons to talk to her pets on the phone. However, as she was passing the phone around, she kept dropping it on the bar counter and, therefore, was not very successful in passing it around (N.T. 9-10).

6. Another female patron at the bar suggested that the female patron in question order some food. The female patron called the bartender, Dave, over and placed an order for buffalo wings with special sauce. A short time later, the female patron was served the buffalo wings. She took hold of one of the wings, but was unable to get it to her mouth. Instead, she kept hitting the side of her cheek. She had the sauce from the wings smeared all over her cheek and, she dropped some of the sauce down the front of her "scoop top" onto the cleavage of her chest (N.T. 10-11).

7. The female patron put the wing down and took a napkin to wipe the sauce off her cheek and then pulled her shirt almost all the way down to expose her breasts to wipe off the sauce (N.T. 10-11).

8. The officer observed that the female patron had a drink in front of her. On several occasions she attempted to take a drink from this beverage. She picked up the glass and tried to bring the straw to her mouth to take a drink. She poked herself in the face or the nose, and a couple of times she almost poked herself in the eye just trying to get the straw to her mouth (N.T. 11-12).

9. After attempting to eat the wings, the female patron put her head in her hands and appeared to fall asleep (N.T. 12). The female patron was unsuccessful in falling asleep as her elbows would slip out from under her on the bar counter. Her head would go down and then she would attempt to prop her head up again. Eventually, she did fall asleep. At this point the bartender walked over to her and asked if she was alright. This shocked her awake. When she woke up, she was startled and confused and didn't seem to know where she was. She did not answer the bartender.

10. The female patron again tried to pass around her cell phone. At this point she was knocking down her glasses, her purse and her coat that was propped on the back of her chair. She referred to all these things as her cell phone. When she'd knock something on the floor along the bar counter, she would just laugh and leave it there until one of the other patrons picked it up for her and put it back on her chair (N.T. 14).

11. Eventually, the female patron finished her drink. The bartender saw her drink was empty and walked over. He asked her if she needed another drink to which she replied yes. The bartender then moved to one of the racks and prepared a drink containing Bacardi rum and Diet Coke (N.T. 13-14).

12. Eventually the husband of the female patron returned. He indicated to her that it was time for her to go home. The female patron provided her credit card to the bartender. She had great difficulty picking up the pen and signing the credit card receipt (N.T. 15).

13. When the female patron and her husband attempted to leave, she was unable to walk. Her husband had to put both arms around her, pick her up and walk her out the back entrance of the licensed premises (N.T. 15-16).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The preponderance of the credible evidence establishes that the female patron in question, after exhibiting clear and definite signs of intoxication was served a mixed alcoholic beverage containing Bacardi rum and Diet Coke.

In a liquor license case, the burden is on the Commonwealth to establish a violation by a clear preponderance of the evidence. *In re Omicron Enterprises*, 449 A.2d 857 (Pa.Cmwlt 1982).

The phrase "preponderance of evidence" has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. *Black's Law Dictionary, Fifth Edition*, West Publishing Company, Copyright 1979, Page 1064.

It is within my province, and is part of my responsibility to determine the credibility of witnesses and the weight to be given to their testimony. *State Correctional Institute v. Robinson*, 561 A.2d 82 (Pa.Cmwlth 1989). I may give testimony such consideration as it may deserve, and accept it or reject it in whole or in part. *McFarland Landscape Service v. Workmen's Comp. Bd. Of Appeal*, 557 A.2d 816, 817-18 (Pa.Cmwlth 1989); *Hollenbach v. North Wales Foundry Co.*, 136 A.2d 148, 150 (Pa.Super 1957).

In this case, Licensee presented the testimony of the bartender on duty during the incident in question. He testified that the female patron in question only exhibited signs of intoxication after being served the mixed alcoholic beverages containing rum and diet coke. However, that the testimony of the officer was precise and consistent, I therefore, give it greater weight than the testimony of the bartender.

As the officer described, the bartender served an alcoholic beverage to a female patron who exhibited clear signs of intoxication. I therefore, conclude that the Bureau has met its burden and the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since May 24, 1994, and has had two prior violations:

Citation No. 05-0567. Fine \$300.00.

1. Discounted the price of alcoholic beverages in excess of 2 hours in a business day. January 18, 2005.

Citation No. 05-2677. Fine \$1,300.00.

1. Sales to a visibly intoxicated person. September 22, 2005.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,750.00 and RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee POPPE-REED, INC., pay a fine of \$1,750.00 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.

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](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto:LBEducation@state.pa.us)) within 30 days of the mailing date of this Adjudication. 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.

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. §4-471(d)].

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 28<sup>TH</sup> day of April, 2010.

A handwritten signature in black ink, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

Daniel T. Flaherty, Jr., J.

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**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 submit stub with payment**

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make 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

Citation No. 07-1410  
Poppe-Reed, Inc.