

Mailing Date: DEC 16 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2212
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-356637
	:	
6119 CORP.	:	
6119 RIDGE AVE.	:	LID - 17459
PHILADELPHIA PA 19128-1604	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-15612	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

JAMES E. DAILEY, ESQ.

FOR THE LICENSEE:

DONALD MOSER, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 21, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 6119 Corp., License Number R-AP-SS-OPS-15612 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, March 18, 2008, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on June 22 and 23, 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 (1) visibly intoxicated male patron.

FINDINGS OF FACT:

1. On June 22, 2007, Officer Bernesky conducted an investigation of the licensed premises. He arrived at the premises on June 22, 2007 at 10:45 p.m. (N.T. 5).

2. When Officer Bernesky entered through the front door, he noted that there were booths on the right hand side, the bar was in the middle and there were restrooms in the back. The premises was basically in the shaped of a rectangle. The premises was open and operating when he arrived (N.T. 6).

3. Officer Bernesky noted that there was a bartender on duty. He took a seat at the bar towards the back. There were approximately twenty patrons on the premises (N.T. 6).

4. The officer observed a patron dressed in a Scooby-Doo costume. He had a gray beard and was about 5'9" tall and about 200 lbs. He had a full costume over his head and body. The officer could see the individual's face (N.T. 7).

5. The officer was seated at the bar and observed the patron in the Scooby-Doo outfit get up, sit down, get up and sit down as he talked to various individuals. The officer was seated near the end of the bar towards the restroom by the cash register. He was approximately three to four feet from the patron in the Scooby-Doo outfit. He observed this patron for fifteen to twenty minutes (N.T. 7).

6. The officer heard the individual speaking to other patrons. The individual had Budweiser beer in his hand and was swaying back and forth as he was talking. The officer was able to see his eyes which appeared light and glassy. The officer was unable to understand much of his speech. During the time the officer was in the premises, the individual approached him on a couple of occasions in his Scooby-Doo outfit. The patron was talking to some young ladies that were seated next to the officer. He said some things that the officer could not really understand (N.T. 8-9).

7. As the patron talked, he was rocking back on his heels and he was stopping and talking to people. He was wearing a full body costume, one that you would have to step into. The officer was uncertain as to whether the costume was under the bottom of his feet, but it did cover his shoes (N.T. 9-10).

8. The officer was in the premises from 10:35 p.m. until approximately 11:30 p.m. (N.T. 10).

9. The officer stated that based on his experience, the signs of intoxication include staggering, stumbling, rocking back and forth on your heels, glassy eyes, slurred speech, fumbling with money or the inability to light a cigarette. Based upon the officer's observations for over the forty-five minutes, he determined that the individual in the Scooby-Doo outfit was visibly intoxicated (N.T. 10-11).

10. The officer observed the individual order a beer about 11:30 p.m. Money was exchanged between him and the bartender (N.T. 11).

11. The individual in the Scooby-Doo suit started drinking the beer, but exited the premises at 11:45 p.m. (N.T. 11).

12. He reentered the bar about twenty minutes later which would have been approximately 11:55 p.m. The individual continued to talk like the cartoon character, Scooby-Doo, while talking to other patrons. He stumbled some and held on to barstools to steady himself. He sat at the corner of the bar near the entrance and talked to people for approximately fifteen minutes. He ordered an alcoholic beverage. The officer continued to observe him with slurred speech and rocking back and forth as he was standing there drinking the Budweiser. The officer saw him served another Budweiser and the officer left the bar at 12:30 a.m. (N.T. 11-12).

13. The officer could not determine whether or not the costume was affecting his ability to walk. The costume was oversized (N.T. 14).

14. Jerry Murphy is the bartender at the licensed and has been a bartender for approximately twenty-five years. He has worked for the Licensee for approximately twenty years. In the course of the twenty-five years, he had many opportunities to observe people who were visibly intoxicated (N.T. 18-19).

15. The bartender indicated that the man in the Scooby-Doo's name is Timmy and that he is in the bartender's words "a little goofy." The bartender indicated that the suit that he was wearing has paws on it which are approximately three to four feet long and it would affect his ability to walk (N.T. 20-22).

16. The bartender knows the individual and stated that he talks to a lot of people. He has a scratchy voice, but is generally loud (N.T. 22-23).

17. The bartender did not consider Timmy to be visibly intoxicated (N.T. 22).

18. Charles Miller is in the president of the licensed premises. He indicated that he was in the bar on June 22, 2007. Timmy is also known to him. He has seen him on a few occasions in the Scooby-Doo outfit. He stated that he hasn't seen Timmy in recent months (N.T. 27-28).

19. Mr. Miller indicated that the suit is very baggy, has feet and zips up like a baby's onesie. It has shoes and paws and a snout (N.T. 28).

20. Mr. Miller indicated that he staggers when he walks while in this outfit (N.T. 29).

21. Mr. Miller did not believe that the individual was visibly intoxicated on June 22, 2007 (N.T. 30).

CONCLUSIONS OF LAW:

There is insufficient evidence to conclude that on June 22 and 23, 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 (1) visibly intoxicated male patron, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

DISCUSSION:

The officer assessed the condition of the man in the Scooby-Doo suit and made what was a reasonable conclusion that he was visibly intoxicated. The bartender and the president of the licensed corporation also had an opportunity to view the individual and concluded to the contrary. Given the circumstances, in that the individual was wearing a suit with feet and which in addition had a snout over his nose, he may in fact have been loquacious and even silly, but not necessarily intoxicated.

The officers saw him served three beers, but the officer's testimony was that at least one of those beers he did not consume in its entirety before leaving the premises and then returning sometime later.

Under these circumstances, it may have been a difficult call to determine that the individual was in fact intoxicated. The Court points out that in situations where individuals are known to the bar, the bartenders are often more tolerant than those individuals and are not as quick to cease service of alcoholic beverages. Sometimes it is because the person's behavior is known to them and not considered to be disruptive or dangerous. That is not a good basis on which to determine whether someone is intoxicated and not a good basis to determine that they should not be served. Considering everything the officer saw and considering the outfit and conditions, the Court does not find that this individual was visibly intoxicated, but also does not find the officer's testimony incredible or his conclusion unreasonable under the circumstances.

Although the Court does not find the Licensee in violation, the Court heartily suggests that Licensee takes heed of the admonishments stated above.

6119 Corp.
Citation No. 07-2212

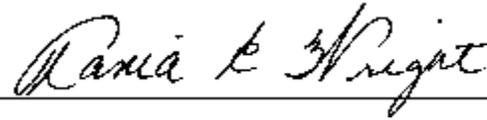
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Citation No. 07-2212 is DISMISSED.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 8TH day of DECEMBER, 2008.

A handwritten signature in cursive script that reads "Tania E. Wright". The signature is written in black ink and is positioned above a horizontal line.

Tania E. Wright, J.

NOTE: 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.

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