

This proceeding arises out of a citation that was issued on November 19, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 60 Toms, Inc., License Number R-AP-SS-10927 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, April 15, 2009, 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 Sections 471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31), and Section 780-101, *et seq.*, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101, in that on March 17, 23, April 14, 20, 25, 28, May 11 and June 29, 2007, Licensee, by its servants, agents or employes, 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.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises pursuant to a complaint by the Clifton Heights Police Department. On September 4, 2007, an officer from the Bureau met with officers from the Clifton Heights Police Department and collected reports and conducted interviews of the officers. The information provided was relative to an undercover drug operation (N.T. 7-8).

2. The Bureau officer collected information from an investigation, from August 24 to October 5, 2007 by the Clifton Heights Police Department. A citation was issued based on that information (N.T. 9 and Exhibits B-1 and B-2).

3. Timothy Rockenbach is employed by the Clifton Heights Police Department and is a Sergeant and a Criminal Investigator. He has been employed with the Clifton Heights Police Department for about twenty years. During that time, he attended school for training in the identification of illegal narcotics. He has made numerous arrests for possession, sale and use of illegal narcotics. He has conducted drug investigations with county narcotics agencies to assist them in making arrests and apprehensions for sales and use of narcotics. He has conducted approximately one hundred investigations of this nature over the past twenty years (N.T. 12-13).

4. Officer Rockenbach was certified in 2000 for identification and field testing of narcotics. He uses the NIK test, a process by which chemicals are introduced to a sample of the narcotic and the color changes in response to whether it is a narcotic or not. The test is mostly used on street drugs, heroin, cocaine and marijuana. These drugs are field tested and then sent to the

crimes lab. The NIK testing is not performed on prescription medications. Those tests are done at the Pennsylvania State Police Crimes Lab (N.T. 13-14).

5. Officer Rockenbach was part of the investigation by Clifton Heights Police from March through June of 2007 relative to the licensed premises. Sergeant Rockenbach's responsibilities included overseeing the undercover operation (N.T. 14 and 24).

6. On March 17, 2007, Officer Rockenbach was a supervisor and part of an investigation at the licensed premises. On March 17, 2007, the officer was in the vicinity of the premises, but never went inside the premises. At 7:00 p.m. on March 17, 2007, he was outside the premises as backup, but did not do any active work on that occasion. Other officers arrived at the premises about 7:00 p.m., while he remained outside (N.T. 14-17).

7. At the end of the evening of March 17, 2007, the other officers turned over narcotics to Officer Rockenbach as a result of the investigation of the licensed premises. On that night, undercover officers purchased prescription narcotics from a person identified as Anthony Zecca. The drugs were turned over to Officer Rockenbach and subsequently sent to the State Police Crime Lab. The products included a clear plastic bag, which contained six oval orange tablets labeled as G3720. The tablets were determined to be alprazolam, a Schedule IV drug, which is commonly known as Xanax (N.T. 17-19).

8. On March 22, 2007, into the early morning hours of March 23, 2007, the officer conducted an investigation of the premises. He arrived at approximately 10:00 p.m. Again he was in the area for backup, but was not present for any sales inside the building. On March 22, 2007 into March 23, 2007, he remained outside of the licensed premises where two other officers went in to attempt to buy narcotics. The officers turned over twenty bags of items suspected to be cocaine. Officer Rockenbach conducted NIK field tests and determined that the substance in the bags was cocaine (N.T. 19-20).

9. On April 14, 2007, Sergeant Rockenbach participated in the investigation, by remaining in the vicinity outside the premises. At the end of the night, the other officers turned over two green plastic Ziploc bags containing a white powder. They field tested that product using the NIK test and it was positive for cocaine. Those items suspected to be cocaine were turned over to the State Police lab for analysis. The samples were determined to be cocaine, a Schedule II drug, consistent with the NIK test (N.T. 24-26 and Exhibit B-3).

10. Sergeant Rockenbach was again in the vicinity of the premises on April 20, 2007. He arrived at approximately 9:30 p.m. and two other officers were assigned to investigate inside the premises. Later in the evening, two purple Ziploc bags containing white powder were turned

over to Sergeant Rockenbach and were field tested. They were determined to be positive for cocaine. The items were turned over to the Pennsylvania State Police Lab for additional analysis. The items were determined to be cocaine, a Schedule II drug, consistent with the NIK test (N.T. 27-28 and Exhibit B-3).

11. On April 25, 2007, Sergeant Rockenbach was again outside the licensed premises. He arrived at approximately 7:00 p.m. Other officers were assigned that evening to conduct an investigation of the licensed premises. At the end of the evening, the officers turned over two clear plastic Ziploc bags containing white powder. Sergeant Rockenbach performed a field test on the substance, which was determined to be cocaine. The items were turned over to the Pennsylvania State Police Lab and determined to be cocaine, a Schedule II drug, consistent with the NIK test (N.T. 29-30 and Exhibit B-3).

12. On April 28, 2007, Sergeant Rockenbach continued his investigation of the licensed premises, which included two other officers visiting inside the premises. Later that evening, the two officers turned over two cellophane wrappers each containing three oblong white tablets marked M360. No field test was conducted on that substance. The items were turned over to the police lab. The items were determined to be dihydrocodeinone, a Schedule II drug (N.T. 31-32 and Exhibit B-3).

13. On May 11, 2007, again Officer Rockenbach visited the licensed premises. He arrived in the area at approximately 10:00 p.m. as the part of an investigation that included two other officers. At some point in the evening, the two other officers turned over a cellophane wrapper containing five round white tablets labeled 93832. They were not field tested. They were turned over to the State Police Lab and were determined to be clonazepam, a Schedule IV drug (N.T. 33-34 and Exhibit B-3).

14. On June 29, 2007, Officer Rockenbach was again in the vicinity of the licensed premises conducting an investigation, which included two other officers who visited certain premises, which included the licensed premises. At some point during the evening, the officers turned over a product to Officer Rockenbach. A field test was conducted and the substance was found to be positive for marijuana (N.T. 34-35).

15. At no time during the investigation was Officer Rockenbach inside the licensed premises. Anthony Michael Zecca, Matthew Harnet, Robert Williams, William Strauss and Kelly Fries were arrested as a result of the investigation of the licensed premises (N.T. 36-38).

16. During each night, the police officers were involved in visits to a number of different locations (N.T. 52).

17. Officer Rockenbach first entered the premises on July 11, 2007 at approximately 8:00

p.m., during the execution of the search warrant (N.T. 59).

18. No arrests were made on that day and the people who they were looking for were not there (N.T. 59).

19. No drug paraphernalia was recovered at the time of the execution of the Search Warrant (N.T. 62).

20. Officer McKnight is employed as an officer with the Clifton Heights Police Department and has been so employed since March of 2007. At the time of this investigation, she was employed as an undercover narcotics officer. She was trained by the Criminal Investigation Unit. Officer McKnight went out with other officers, to purchase narcotics in an undercover capacity. She also went out with other police departments on two or three occasions, to make undercover purchases (N.T. 71-73).

21. During this investigation, Officer McKnight was working with Officer McGee. In March, 2007, she conducted an investigation of the licensed premises along with Officer McGee. Officer Rockenbach was their supervisor (N.T. 73-74).

22. On March 17, 2007, Officer McKnight arrived at the premises at approximately 9:30 p.m., along with Officer McGee. After entering the premises, she sat at the bar. The premises was open and operating at this time. There was a bartender on duty. On this night, the officer made two purchases from two different individuals. The first contact was with an individual named Robert (Rob) Williams. Later in the evening, twenty dollars was given to him in exchange for small baggies with a white substance believed to be cocaine. The exchange was between Officer McGee and the patron, Robert Williams (N.T. 74-79).

23. Officers McKnight and McGee engaged in conversation with the second patron, Anthony Zecca, while he was at the bar. As a result of the conversation with Anthony Zecca, the officers left the bar and drove five to ten minutes to Upland in order to complete the drug transaction (N.T. 79-80).

24. The officers drove Mr. Zecca to Upland. He left the car, obtained the drugs and drove back to Clifton Heights to the location of the bar. The officers purchased Percocet on that occasion (N.T. 79-81).

25. Later in the evening, they met up with Sergeant Rockenbach and handed over the six Percocet tablets and, a substance believed to be cocaine, to Officer Rockenbach (N.T. 81-82).

26. On March 22, 2007, Officer McKnight entered the premises, along with Officer McGee. Sergeant Rockenbach was outside the premises. The officer entered at approximately 10:00 p.m. The premises was open and operating and a bartender was on duty. There were patrons inside the premises. Both officers remained seated at the bar in an undercover capacity. The officers engaged in conversation with the same Robert Williams they had met on a prior visit to the premises. During the conversation with Mr. Williams, money was exchanged for two plastic baggies containing a white powdery substance believed to be cocaine. The officers turned those baggies over to Sergeant Rockenbach later in the evening. The transaction occurred at approximately 12:30 a.m., during the early morning hours of March 23, 2007 (N.T. 85-89).

27. On April 14, 2007, Officer McKnight visited the licensed premises along with Officer McGee. Again, Officer Rockenbach was in the area outside. The officers entered the premises at approximately 8:30 p.m. The premises was open and operating. There were patrons inside and a bartender was on duty. The officer ordered a Miller Lite, as was her routine when visiting the premises. On this occasion, the officers engaged in conversation with two females they had met prior to entering the premises. They asked the two females where Officer McKnight might get cocaine. As a result of their conversation, they were introduced to Matthew Hartnet, who was inside the premises (N.T. 89-91).

28. Mr. Hartnet approached Officer McKnight. She asked him for cocaine and handed him two twenty dollar bills in exchange for two bags of cocaine (N.T. 92).

29. When the officers departed the premises, they met Sergeant Rockenbach and turned the bags over to him (N.T. 93).

30. On April 20, 2007, Officer McKnight arrived at the licensed premises at approximately 9:30 p.m., again accompanied by Officer McGee. The two sat at the bar and engaged in conversation with Matthew Hartnet. Again, they purchased two bags of cocaine for twenty dollars each. They departed the premises and met with Officer Rockenbach and turned over the product to him (N.T. 93-94).

31. On April 25, 2007, Officer McKnight again visited the licensed premises accompanied by Officer McGee. They entered the premises at approximately 7:00 p.m. The premises was open and operating and there was a bartender on duty. The two officers engaged in conversation with a patron, Robert Williams, whom they had met on a prior occasion. Officer McGee went inside the men's room with Mr. Williams to complete the transaction (N.T. 94-97).

32. Officer McKnight left the premises with Officer McGee, at which times he turned over what was later to be determined to be drugs to Officer Rockenbach (N.T. 98).

33. Officer McKnight entered the premises along with Officer McGee on April 28, 2007, arriving at approximately 7:00 p.m. She purchased a Miller Lite Beer on this occasion and

engaged a patron, Kelly Gray, in conversation. The officers previously met Kelly Gray, whom they had seen at the premises quite a few times. Officers McKnight and McGee had become regulars at the premises and recognized bartenders and patrons from previous visits (N.T. 99101).

34. On April 28, 2007, the officers engaged in conversation with Kelly Gray involving drugs. Officer McGee spoke with Kelly Gray, however, the transaction was made in the ladies room where Kelly Gray handed Officer McKnight the pill. In exchange for the pill, Officer McGee had purchased Kelly Gray a drink. When they left the premises, the two officers met with Sergeant Rockenbach and turned the pill over to him, at approximately 10:00 p.m. (N.T. 102).

35. On the same occasion, the officers spoke with Kelly Fries, whom they recognized as an associate of Robert Williams with whom they had had prior contact. The officers engaged in drug conversation with them. In exchange for money, Kelly Fries stuck five pills in Officer McKnight's purse. The pills were supposed to be clonazepam. Again, when they met with Officer Rockenbach, they turned over the five pills to him (N.T. 103-105).

36. On June 29, 2007, the officer visited the premises arriving there between 9:30 and 10:00 p.m. The premises was open and operating. Officer McKnight purchased a Miller Lite beer on that occasion. On this occasion, Officer McGee conversed with Patrick Hayden. Officer McKnight did not see a drug exchange on this occasion. However, later in the evening, Officer McGee handed over drugs that he had purchased to Sergeant Rockenbach (N.T. 106).

37. On March 17, 2007, Officer McKnight recalled that there were approximately three bartenders on duty. Some of the drug transactions occurred at the bar and some of them were done away from the bar (N.T. 107-108).

38. The officers visited the premises five times a week during March to June. During this time, they made numerous purchases of drugs. The Licensee was cited with regard to eight illegal purchases of drugs made during this period (N.T. 109-110).

39. The officers established a procedure where they would meet Officer Rockenbach after their visit to the licensed premises. They would meet whether or not they had made any purchases of drugs (N.T. 111-112).

40. On March 17, 2007, Officer McKnight entered the bar at approximately 7:00 p.m.; however, no drug buys were made until approximately 9:30 p.m. (N.T. 114).

41. At one point, Officer McGee was speaking with a patron, Shaun Thomas, having a drug conversation, and one of the bouncers came over and took Shaun away. Shaun went to the

door with him and talked with him. The bouncer allowed Shaun to stay, but did remove another person from the premises (N.T. 141).

42. Michael Stern is the principal of the licensed premises and sole corporate officer, director and shareholder. He has operated the establishment for approximately four years (N.T. 152-153).

43. Mr. Stern indicated that his outdoor cameras were installed in October of 2007. There were originally four cameras, which were VCR type systems. It was then updated to a DVR that records for a period of approximately ninety days. The images from the nine cameras are in color; the cameras are all motion sensitive (N.T. 159).

44. Mr. Stern first acquired the premises in 2005, along with a partner. He bought the partner out and has since owned the property by himself. When he first purchased it, he made improvements by refurbishing and renovating the location (N.T. 164-165 and Exhibit L-7).

45. Licensee has a kitchen, menus and food preparation services (N.T. 166).

46. The Licensee maintains a dress code in the evening (N.T. 165-166).

47. Licensee maintains in house pool leagues, karaoke, a Friday night disc jockey and a Saturday night live band (N.T. 167).

48. Licensee indicated that all his employees are R.A.M.P. certified. The premises was R.A.M.P. certified on January 27, 2010 (N.T. 168-169).

49. Sometime in April or May of 2007, Licensee became aware of narcotics activity and/or an investigation taking place on the premises. Licensee went to see the Chief of Police to offer his cooperation (N.T. 169-170).

50. Licensee indicated that he had earlier meetings with the Chief of Police with regard to legal issues, i.e. liability with regard to bouncers (N.T. 170).

51. The Licensee indicated they had always had a no drug policy, but that he stepped up the procedures to include increased security (N.T. 171-172).

52. The Licensee also indicated that he employed someone to card individuals and used the swipe machine (N.T. 173).

53. The Licensee hired an individual as a floater to look into the restrooms and the pool room on Friday and Saturday nights (N.T. 173-174).

54. Licensee has signage on the premises with regard to the dress code, the drug policy and the requirement for identification (N.T. 179).

CONCLUSIONS OF LAW:

On March 17, 23, April 14, 20, 25, 28, May 11 and June 29, 2007, Licensee, by its servants, agents or employees, 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, in violation of Sections 471 and 493(31) of the Liquor Code, 47 P.S. §§4-471 and 4-493(31), and Section 780-101, et seq., of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. §780-101.

PRIOR RECORD:

Licensee has been licensed since June 10, 2005, and has no record of prior violations.

DISCUSSION:

During a drug investigation involving the licensed premises and other premises in surrounding areas, officers from the Clifton Heights Police Department made a number of drug purchases on the licensed premises. Licensee was cited for eight drug purchases made by undercover officers on the premises from March 17, 2007 to June 29, 2007. Six different people at the licensed establishment either offered or made drugs available to the officers. The officers were able to purchase cocaine and marijuana and prescription drugs such as Vicodin and Kolodopins (Klonopin).

There were numerous drug merchants and a variety of merchandise. Many contacts and drug conversations took place on the licensed premises, though some actual sales, i.e. exchange of drugs for money, took place outside of the premises. Some dealers stocked their wares off of the premises and some had drugs on their persons. But, at least one dealer went into the kitchen and seemingly returned with illegal drugs.

Licensee's establishment was a virtual drug market. Some of the transactions occurred in the restroom, or in back of the bar, but a number of them occurred at the bar. The frequency and volume of the drug sales on the premises clearly established that the Licensee knew or should have known of the drug trafficking in the premises. *Pennsylvania Liquor Control Board v. TLK*, 544 A.2d 931 (Pa. 1988); *Primo's Bar, Inc. v. Com. Pa. Liquor Control Board*, 409 A.2d 1369 (Pa. Cmwlth. 1979).

Testimonial evidence of the police officers and documentary evidence in the nature of laboratory submittal sheets and laboratory reports, taken in its entirety, demonstrate that the police did maintain a chain of custody that insured reliability and trustworthiness and that the items purchased from the licensed premises were those which were analyzed and found to be illegally obtained drugs. See the *Opinion* of the Office of Administrative Law Judge in *JH Properties, Inc.* Citation No. 00-1667.

Licensee was aware that there was or had been a drug problem at or near the premises. Licensee attempts to defend himself by alleging that it took substantial affirmative steps to guard against the drug activities. It is difficult to imagine that Licensee was taking *substantial* steps to prevent a known pattern of drug trafficking when there was so much trafficking by so many individuals going on inside his own premises. At any rate, Licensee's initial efforts were wholly ineffective. In one instance, an officer testified that when the doorman overheard a patron offer drugs to him, the doorman warned the individual that he could get banned from the premises, but ultimately allowed him to remain and made no effort to involve the police. This does not constitute substantial steps. Licensee did step up its security; however most of these efforts seemed to be as a result of the police investigation.

Under the circumstances a \$1,000.00 monetary penalty and forty-five (45) day suspension shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 60 Toms, Inc., License Number R-APSS-10927, pay a fine of One Thousand Dollars (\$1,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

IT IS FURTHER ORDERED that the Restaurant Liquor License of 60 Toms, Inc., License Number R-AP-SS-10927, be suspended for a period of forty-five (45) days **BEGINNING** at 7:00 a.m. on Monday, August 30, 2010 and **ENDING** at 7:00 a.m. on Thursday, October 14, 2010.

Licensee is directed on Monday, August 30, 2010 at 7:00 a.m. to place the enclosed 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.

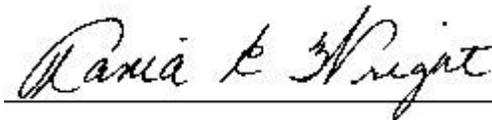
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Thursday, October 14, 2010 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

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

Dated this 1ST day of JUNE, 2010.



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

60 Toms, Inc.
Citation No. 07-2750

JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Citation No. 07-2750 60
Toms, Inc.