

Mailing Date: OCT 23 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2899
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-354299
v.	:	
	:	LID - 28424
MCCARTY'S FINISH LINE, INC.	:	
T/A TAYLOR'S BAR AND GRILL	:	
6021 STATE RT. 42	:	
UNITYVILLE, PA 17774-9000	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. R-AP-SS-10961	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Andrew J. Lovette, Esquire

For Licensee  
NO APPEARANCE

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on December 27, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MCCARTY'S FINISH LINE, INC., License Number R-AP-SS-10961 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on August 11, 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 male patron.

The second count charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)] in that Licensee, by its servants, agents or employes, issued checks or drafts dated June 15 and 22, 2007, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The investigation which gave rise to the citation began on May 9, 2007 and was completed on September 11, 2007; and notice of the violation was sent to Licensee by Certified Mail on September 25, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 17, 2008 in the PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 6021 State Rt. 42, Unityville, PA 17774-9000 by certified mail, return receipt requested and by first class mail on June 2, 2008. The notice set forth the date and time of the hearing as July 17, 2008 at 2:30 p.m., and the place of hearing as PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, PA 17754.

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:

COUNT 1

1. On August 11, 2007 at 9:30 p.m., an officer of the Bureau entered the licensed premises where he observed a female bartender known as Tiffany rendering service to 15 patrons. Also present was the president of Licensee corporation, Barry McCarty (N.T. 9).
2. Upon entry, the officer's attention was drawn to a male patron heard to be called Nate. Nate was seated at the bar near the front entrance of the licensed premises (N.T. 9).
3. Nate was being very vocal, using a lot of profanity, cursing and vocally complaining about his wife and suspicions of her cheating. The officer observed that Nate's speech was very slurred and garbled. He was having great trouble maintaining his balance while seated at the bar. He was swaying from side to side and front to back, and his head was bobbing (N.T. 10).
4. The officer observed that on several occasions Nate had to grab onto the bar. He also would lean into a post that was near his seat (N.T. 10).

5. While this was going on, the bartender Tiffany saw that Nate had an empty beer bottle in front of him. She took away the empty beer bottle and replaced it with a fresh bottle of beer she had removed from the cooler and opened and gave it to Nate. She then just took money from a pile in front of Nate on the top of the bar (N.T. 10).

6. At 9:58 p.m. a female patron entered the bar and took a seat immediately to the right of Nate. When Nate noticed her, he immediately started complaining to her, cursing at her. He kept asking her where his wife was and who she was with. He seemed to be putting his focus on the patron and taking out his frustrations on her, putting his fist in her face and putting his finger in her face. While he was doing this, he exhibited a severe lack of balance. His speech was still slurred and garbled and his head was bobbing up and down. He was swaying in his seat from left to right and front to back (N.T. 11).

7. While Nate was carrying on, Mr. McCarty came and stood behind him for a couple of minutes. He was evaluating what was going on and was listening to Nate. He eventually did lean in and tell Nate that he needed to calm down. McCarty said that Nate needed to relax or he was going to be made to leave (N.T. 12).

8. Nate behaved for approximately two minutes, and after that he just started in again cursing and complaining about his wife (N.T. 13).

9. At about 10:15 p.m., after McCarty had confronted Nate and asked him to calm down, Nate requested another beer from the bartender. The bartender took another Budweiser Light bottle from the cooler behind the bar and gave it to Nate. She then took money from a pile of money that was in front of Nate and placed it in the register behind the bar. Nate consumed from the bottle of beer (N.T. 13).

10. During the course of the officer's observation of Nate he got louder and more aggressive toward to female patron who was seated next to him. His speech became more slurred and garbled as he spoke and harder to understand (N.T. 13).

11. At 10:30 p.m. Mr. McCarty confronted Nate again and told him to calm down. Nate was not phased at all and continued to complain to the female patron next to him (N.T. 14).

12. At 10:35 p.m. the bartender Tiffany got another beer for Nate from the cooler behind the bar and gave it to him. She also gave Nate a shot of liquor. Nate consumed the liquor. Tiffany took money from the pile of money in front of Nate and put it in the register behind the bar (N.T. 14).

COUNT 2

13. On June 15, 2007, Licensee purchased malt or brewed beverages from Mid State Beverage Co. In payment therefore, Licensee issued its check in the amount of \$297.80. The aforementioned check was returned by Licensee's bank for insufficient funds (N.T. 22-24 and Exhibit C-4).

14. The aforementioned check was made good by Licensee on July 6, 2007 with a Cashier's Check (N.T. 24).

15. On June 22, 2007 Licensee purchased malt or brewed beverages from Durdach Bros., Inc. In payment therefore, Licensee issued its check in the amount of \$436.04. The check was returned by Licensee's bank for insufficient funds (N.T. 29-30 and Exhibit C-5).

16. The aforementioned check was made good by redeposit (N.T. 31).

17. On September 25, 2007 Licensee was sent a warning letter with respect to two checks which were written for malt or brewed beverages and returned by Licensee's bank for insufficient funds. One check was dated June 8, 2007 and was issued to Mid State Beverage Co. in the amount of \$282.14. The other check was dated June 15, 2007 and was issued to Durdach Bros., Inc. in the amount of \$505.78 (N.T. Exhibit C-3).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since October 18, 1991, and has had two prior violations:

Citation No. 04-0667. Fine \$300.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 9, 10 and 12, 2003.
2. Operated the licensed establishment without a valid health permit or license. December 5, 2003, January 2, 30 and February 9, 2004.

Citation No. 04-1470. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside. July 31, 2004.

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 Count 1 of 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.

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 2 of this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$1,500.00 and mandatory RAMP training  
Count 2 - \$ 250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee MCCARTY'S FINISH LINE, 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 15<sup>th</sup> day of October, 2008.

---

Daniel T. Flaherty, Jr., J.

an

**MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 submit stub with payment**

-----  
The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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. 07-2899  
McCarty's Finish Line, Inc.