

The second count charges Licensee with violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(3) and 4-493(16)] in that on November 18, 2007, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on August 22 and November 18, 2007, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The fourth count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on August 22 and November 18, 2007, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The investigation which gave rise to the citation began on August 10, 2007 and was completed on November 18, 2007; and notice of the violation was sent to Licensee by Certified Mail on December 17, 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, 300 Cameron Avenue, Milton, PA 17847-2002 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 12:30 p.m., and the place of hearing as PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

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:

COUNTS 1, 2, 3 AND 4

1. On August 22, 2007 at 12:16 a.m. an officer of the Bureau entered the licensed premises where she observed a female bartender identified as Cathy Callenburger tending bar and rendering service to eight patrons (N.T. 8).

2. The officer took a position in the bar area. At 1:49 a.m. the bartender verbally gave last call. She started at one end of the bar and proceeded down through all patrons, asking each patron if he or she wished to participate in last call. At this time, all patrons did participate. Patrons that were already in possession of alcoholic beverages and were not in need of new ones, were able to purchase alcoholic beverage drink chips. Some patrons, however, were actually given alcoholic beverages due to needing a drink (N.T. 9).

3. The bartender came in front of the officer and asked her if she wanted last call. The officer responded that she did. The bartender asked the officer if she wanted one or two drinks. The officer indicated that she wanted one. At this time the officer was consuming a 12 ounce bottle of beer. The bartender grabbed a \$5.00 bill from in front of the officer and went over to the cash register. She rang up the sale as \$2.15 with change coming off as \$2.85 (N.T. 9).

4. The bartender grabbed a drink chip along with the change due to the officer and presented it to the officer at the bar (N.T. 9-10).

5. All purchases concluded by 2:00 a.m. The officer saw no more money transaction or sales of alcoholic beverages entered into the register after that time (N.T. 10).

6. Up until 2:00 a.m., the officer had observed the bartender Cathy Callenburger consuming from a plastic Philadelphia Eagles drink cup. At 2:05 a.m. the officer observed Callenburger filling her cup with a mixed drink consisting of Vladimir vodka, orange juice and clear soda (N.T. 10).

7. At 2:08 a.m. the officer observed a male patron redeem his drink chip and receive a mixed drink consisting of Bacardi rum and Coca Cola (N.T. 11).

8. At 2:12 a.m. a female patron redeemed her drink chip and received a 12 ounce glass of Yuengling Lager draft beer (N.T. 11).

9. At 2:13 a.m. the officer redeemed her purchased drink chip and received one 12-ounce bottle of Michelob Ultra beer (N.T. 12).

10. At 2:18 a.m., a male patron redeemed his drink chip and received a 12 ounce bottle of Samuel Adams cherry wheat beer (N.T. 12).

11. At 2:38 a.m., a male patron redeemed his second drink chip and received a mixed drink of Bacardi rum and Coke (N.T. 12).

12. At 2:43 a.m. the bartender, Cathy Callenburger refilled her Philadelphia Eagles cup the second time with a mixture of Vladimir Vodka, orange juice and soda (N.T. 12).

13. The officer departed the licensed premises on August 22, 2007 at 2:46 a.m. At that time there were four patrons remaining. These patrons were not doing any type of activity that could be characterized as working on the licensed premises. They remained at the bar consuming their alcoholic beverages (N.T. 12-13).

14. On Sunday, November 18, 2007 the officer again arrived at the licensed premises at 1:12 a.m. along with her supervisor. Upon entry the officers observed a female bartender rendering service to approximately 12 adult patrons (N.T. 14).

15. At 1:50 a.m. the bartender verbally gave last call at which time she started going down the bar asking individuals if they wished to purchase any further alcoholic beverages (N.T. 14).

16. The bartender came to the officer and asked if she was interested in purchasing any more alcoholic beverages. The officer indicated that she wished to purchase a mixed drink and two bottles of beer. At that time the bartender took the officer's money and proceeded to ring up the sale. She returned the officer's change and three drink chips, one that reflected good for one mixed drink and two drink chips reflecting good for one 12 ounce bottle of beer each (N.T. 14).

17. After 2:00 a.m. the officer observed no other money exchange hands for alcoholic beverages (N.T. 15).

18. At 2:03 a.m., a female patron redeemed her drink chip and received a 16 ounce can of Keystone Light beer (N.T. 15).

19. At 2:10 a.m. a male patron redeemed his drink chip and received a Coors Light beer (N.T. 15).

20. At 2:15 a.m. a female patron, identified as off duty bartender Cathy Callenburger, redeemed a drink chip and received a mixed drink consisting of Vladimir vodka, orange juice and soda (N.T. 15).

21. At 2:16 a.m. the officer redeemed a drink chip and received a mixed drink consisting of Captain Morgan Spiced rum and Coca Cola (N.T. 15).

22. At 2:18 a.m. a female patron redeemed a drink chip and received a 16 ounce can of Keystone Light beer (N.T. 15).

23. At 2:20 a.m. a male patron redeemed a drink chip and received a Yuengling Lager draft beer (N.T. 16).

24. At 2:22 a.m. off duty bartender Cathy Callenburger redeemed a drink chip for a patron seated to her right. The drink chip was redeemed for a mixed drink consisting of Crown Royal whiskey and Coke (N.T. 16).

25. At 2:27 a.m. the officer's supervisor redeemed a drink chip and received a 12 ounce bottle of Coors Light beer (N.T. 16).

26. At 2:36 a.m. the officers departed the licensed premises. At that time remaining on the premises was a male patron still in possession of and consuming a Coors Light draft beer and off duty bartender Cathy Mast in possession of and consuming a Crown Royal whiskey and Coke mixed drink (N.T. 16-17).

CONCLUSIONS OF LAW:

Counts 1, 2, 3 and 4 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since November 2, 1978, and has had six prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 91-0549. Fine \$1,000.00.

1. Sunday sales after 2:00 a.m.

Citation No. 91-1417. Fine \$450.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (poker machine).

Citation No. 95-0385. Fine \$1,000.00.

1. Sales to a minor.

Citation No. 98-0603. Fine \$450.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine).

Citation No. 00-2106. Fine \$750.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine).

Citation No. 01-0752. 3 days suspension.

1. Sales to a minor.

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 Counts No. 1 and 2 of this case.

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 Counts No. 3 and 4 of this case.

Counts 3 and 4 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

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

- Count 1 - \$1,250.00 fine
- Count 2 - \$1,250.00 fine
- Counts 3 and 4 merged - \$500.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee ARM BAR, INC., pay a fine of \$3,000.00 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.

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

Dated this 7th day of October, 2008.

Daniel T. Flaherty, Jr., J.

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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. 08-0054
Arm Bar, Inc.