

Mailing Date: JAN 15 2009

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0167
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W09-365289
	:	
WILLOW GROVE VETERANS	:	
HOME ASSN. INC.	:	LID - 3701
301-305 W. MORELAND ROAD	:	
UPPER MORELAND TWP.	:	
WILLOW GROVE PA 19090-3107	:	
	:	
MONTGOMERY COUNTY	:	
LICENSE NO. CC-4580	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, ESQ.

FOR THE LICENSEE:

WILLIAM EAGAN, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 8, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Willow Grove Veterans Home Assn., Inc., License Number CC-4580 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 29, 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 contains two counts.

The first count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on December 22, 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 second count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a), in that on December 22, 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 3:30 a.m.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. Officer Brian Farrow is employed by the Bureau of Enforcement and was so employed and working on the night of December 22, 2007. At that time, he was working in an undercover capacity. The officer went in the vicinity of the licensed premises at approximately 2:00 a.m., accompanied by Officer Pirozzi. They parked the car across the street in order to conduct a surveillance of the licensed premises (N.T. 7-8).

2. At approximately 2:10 a.m., Officer Farrow approached the front door of the premises in order to gain entry as a nonmember. The doorman questioned his membership and the officer told him that he was not a member. The doorman denied him entry and the officer went back to his vehicle and continued to conduct a surveillance (N.T. 9).

3. The officer used his clock on his cell phone, which is set by Nextel Communications in order to keep time. He continued with the surveillance. Officer Pirozzi then attempted to gain entry and was also denied entry to the premises (N.T. 9-10).

4. At approximately 3:15 a.m., the officers observed several patrons leaving the licensed premises through a side door. At 3:45 a.m., the officers walked up to the front door, while several patrons were coming out. The officers immediately identified themselves to the doorman (N.T. 10).

5. The officers entered the premises and questioned the bartender, Joseph Bauhmer, who stated that he was in charge of the club. There were three bartenders behind the various bars (N.T. 11).

6. The officer observed two patrons with Miller Light twelve ounce cans or bottles in their hands. The officer approached them and asked when they purchased the beers; they indicated that they did not know. The patrons then put the beers down and walked away (N.T. 11).

7. The officer questioned Mr. Bauhmer as to the time and asked him if he realized that it was past 3:30 a.m. that the patrons were just slowly leaving. The officers then cleared the remaining approximately 23 patrons from the premises (N.T. 12).

8. The officers identified the patrons from the staff, in that the staff wore colored shirts, which indicated Willow Grove, V. F. W. The officers cleared the bar of everyone who they did not believe to be staff members (N.T. 12).

9. Roger Myers is the manager of the V. F. W. He was on duty on that evening. He received a phone call from the doorman indicating that he should come down to the premises. The officers spoke with Mr. Myers and informed him that a notice of violation would be issued (N.T. 12 and 40-42).

10. Mr. Myers believed that he received a call at 3:25 a.m. He indicates that the policy is that they make the last call starting at 2:50 a.m. and at 3:15 a.m., the lights come up and everyone is asked to leave. One doorman is stationed at the front and one doorman at the back (N.T. 40-42)

11. The officers were visiting the club based on a complaint from the Upper Moreland Police Department, who indicated that the premises was serving visibly intoxicated persons and doing so after hours (N.T. 13-14).

12. Officer Rocco Pirozzi is employed by the Bureau and was working on the night of December 22, 2007, along with Officer Farrow. Officer Farrow drove the vehicle and Officer Pirozzi accompanied him to the licensed premises. He corroborated Officer Farrow's testimony in that he stated they conducted a surveillance from an empty parking lot across the street and then moved to the parking lot of the licensed premises approximately thirty-five yards away from the door. At approximately 2:20 a.m., he attempted to enter the licensed premises through the front

door. He was denied entry by an unidentified doorman in that he was not a member of the licensed club (N.T. 29-30).

13. After being denied entry, Officer Pirozzi returned to the vehicle and conducted a surveillance of the licensed premises. He verified that Officer Farrow kept time on his Nextel telephone (N.T. 30).

14. At approximately 3:15 a.m., the officers observed patrons departing the premises from the side entrance. At approximately 3:45 a.m., they entered the premises and identified themselves (N.T. 30-31).

15. Officer Pirozzi noted that there were approximately twenty-three patrons standing around. The employees or staff were wearing identifying t-shirts (N.T. 31).

16. After the officers cleared the premises, there was no issue with the patrons departing (N.T. 31).

CONCLUSIONS OF LAW:

Count No. 1 - On December 22, 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, in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

Count No. 2 - On December 22, 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 3:30 a.m., in violation of Section 499(a) of the Liquor Code, 47 P.S. Section 4-499(a).

PRIOR RECORD:

Licensee has been licensed since January 30, 1947, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

Citation No. 03-0643. \$400.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.
March 17, 2003.

Citation No. 05-0266. \$700.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises. January 31, 2005.

DISCUSSION:

The officers testified credibly that they kept time using Officer Farrow's Nextel telephone and they kept accurate time. The officers testified that they did not enter the premises until approximately 3:45 a.m., which was past the time for cessation of the sale of alcoholic beverages and past the time for the premises to be cleared of patrons. Mr. Myers believed that he received a phone call at 3:25 a.m., however, the Court believes the police officers testimony was true and accurate. The fact finder may give testimony such consideration as it may deserve, and accept or reject it in whole or in part. **McFarland Landscape Service v. Workmen's Comp Bd. of Appeals**, 557 A.2d 816, 817-818 (Pa. Cmwlt. 1989).

The Licensee failed to require patrons to vacate and permitted patrons to remain in possession of alcoholic beverages after the lawful time for cessation of the sale of alcoholic beverages and the time for removal of the alcoholic beverages from the patrons.

Under the circumstances, a monetary penalty shall be issued.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$250.00.

Count No. 2 - \$250.00.

Accordingly, we issue the following

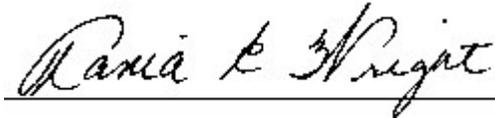
Willow Grove Veterans Home Assn., Inc.
Citation No. 08-0167

ORDER:

THEREFORE, it is hereby Ordered that Licensee, Willow Grove Veterans Home Assn., Inc., License Number CC-4580, pay a fine of Five Hundred Dollars (\$500.00) 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.

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

Dated this 13th day of January, 2009.



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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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:

Willow Grove Veterans Home Assn., Inc.
Citation No. 08-0167

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

Citation No. 08-0167
Willow Grove Veterans