

Mailing Date: OCT 10 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0228
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-367422
v.	:	
	:	LID - 57975
LA FAMIGLIA PIZZERIA &	:	
SPORTSBAR, LLC	:	
625 MAIN RD.	:	
DALLAS, PA 18612-9001	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-17494	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Craig Strong, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 25, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against LA FAMIGLIA PIZZERIA & SPORTSBAR, LLC, License Number R-AP-SS-17494 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on January 6, 2008, 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 investigation which gave rise to the citation began on January 6, 2008 and was completed on January 6, 2008; and notice of the violation was sent to Licensee by Certified Mail on January 22, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 24, 2008 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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, 625 Main Rd., Dallas, PA 18612-9001 by certified mail, return receipt requested and by first class mail on June 6, 2008. The notice set forth the date and time of the hearing as July 24, 2008 at 1:00 p.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

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:

1. On January 26, 2008 at 1:05 a.m., an officer of the Bureau entered the licensed premises (N.T. 7).

2. The officer observed that the premises was open for business, and a band known as "M-80" was playing music for the benefit of patrons. At the time of his entry the band was taking a break and the jukebox was playing (N.T. 7).

3. Very shortly after entry the officer observed a male patron who was staring blankly for several minutes. He snapped out of his daze and engaged a patron beside him in conversation for a few minutes (N.T. 8).

4. After a few minutes the aforementioned patron got up and walked over to where the band could be seen, as the band started playing again. As he walked he was staggering noticeably. He held onto the wall and the barstools when he got up in an attempt to maintain his balance (N.T. 8).

5. After watching the band for about 20 seconds, the patron staggered back towards the bathroom right past Licensee's principal, Mr. Hunter. He actually crashed into a wall right next to Mr. Hunter. He then made his way into the restroom (N.T. 8).

6. The officer entered the restroom shortly behind him and asked the patron if he was okay. The patron made a response to his question, but it was unintelligible. The officer could not understand what he said (N.T. 8).

7. The patron then returned to his seat at the bar, and the officer followed him out from the restroom (N.T. 8-9).

8. A short time after the patron returned to the bar he was served a shot of unknown liquor and a draft beer by the barmaid. The patron drank both of these drinks (N.T. 9).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since June 14, 2007, and has had one prior violation:

Citation No. 07-1968X. Fine \$150.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for purchases of malt or brewed beverages. June 16, 2007.

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 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.

Under the circumstances of this case, the penalty imposed shall be a fine in the amount of \$1,250.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee LA FAMIGLIA PIZZERIA & SPORTSBAR, LLC, pay a fine of \$1,250.00 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; Email Address: 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)].

IT IS FURTHER ORDERED that, since the license is inactive so much of this Adjudication as it relates to mandatory compliance with Liquor Code Section 471.1 pertaining to Responsible Alcohol Management is deferred pending reactivation of the license.

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

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La Famiglia Restaurant Pizzeria