

Mailing Date: MAR 20 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0587
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-369824
v.	:	
	:	LID - 57373
CMJ SHEFFIELD INC	:	
T/A PADDY WHACKS	:	
2711 COMLY RD	:	
PHILADELPHIA PA 19154-2101	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-8510	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.

For Licensee: Edward B. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on March 18, 2008. There are two counts in the citation.

The first count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on February 10, 2008, by failing 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 alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on February 10, 2008, by permitting 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.

A hearing was held on February 4, 2009, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Edward Gartland was filling his state vehicle with gas at about 2:55 a.m. on February 10, 2008. The station where he was doing this faces Licensee's

premises, and his attention was drawn to two men who left the premises, one of them carrying a bottle of beer. The lights of the premises were on (N.T. 5-6).

2. Officer Gartland finished putting fuel in his car and walked to the entrance of the licensed premises. Through the glass door and a window he could see eleven people seated at the bar with bottles of beer and mixed drinks in front of them (N.T. 6).

3. Officer Gartland saw a Philadelphia Police vehicle in the gas station and requested assistance from the officer driving it. Both officers entered the premises at 3:05 a.m. through the main entrance door, which was unlocked. There were still eleven people seated at the bar. The ice in their drinks was fresh. There were also five other people, Licensee's employees, in possession of bottles of beer (N.T. 7-8).

CONCLUSIONS OF LAW:

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on February 10, 2008, by failing 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.

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on February 10, 2008, by permitting patrons to possess and remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

DISCUSSION:

I find it unnecessary to consider the hearsay evidence to which Licensee made a timely objection. Licensee presented a witness whose testimony was contrary to that of the officer, but I have resolved the credibility question in the government's favor.

Since the authority of restaurant licensees to dispense alcoholic beverages exists only between 7:00 a.m. and 2:00 a.m. of the next day, no patrons may be permitted to remain in the area where alcoholic beverages are served longer than one-half hour after that time.

Licensee's contention was that everyone in the premises was an employee, not a patron. For the purposes of the Liquor Code, it does not matter whether there was an employment relationship or not: people sitting at a bar in possession of alcoholic beverages are *patrons*, whatever else they may be.

During the half hour following the mandatory closing time, it is the duty of every licensee to insure that all unfinished alcoholic drinks and the containers in which they were served are removed from the service area. Officer Gartland's first observation, at 2:55 a.m., was well beyond this limitation.

PRIOR RECORD:

Licensee has been licensed since June 14, 2007, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of the type found in this case. The two counts of this citation are merged for penalty purposes.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, CMJ Sheffield, Inc., t/a Paddy Whacks, License No. R-AP-SS-OPS-8510, shall pay a fine of four hundred dollars (\$400.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 16th day of March, 2009.



David L. Shenkle, J.

jb

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

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 to:

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