

Mailing Date: FEB 25 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0603
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-350048
	:	
SHIRLEY ANN COSSU	:	
T/A COZY CORNER	:	LID-51326
22 EUCLID AVE	:	
CANTON TWP	:	
WASHINGTON PA 15301-5402	:	
	:	
WASHINGTON COUNTY	:	
LICENSE NO. R-AP-SS-15640	:	

**BEFORE:** JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:  
Emily L. Gustave, Esquire

For Licensee:  
Thomas C. Panian, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on April 28, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Shirley Ann Cossu, T/A Cozy Corner, License Number R-AP-SS-15640 (hereinafter Licensee).

The citation contains two counts.

Count one of the citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on June 2, 2007, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) female minor and one (1) male minor, twenty (20) years of age.<sup>1</sup>

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<sup>1</sup> At the hearing, counsel for the Bureau moved to amend the citation to include only the female minor and delete the reference to the male minor. (N.T. 36-39)

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Count two of the citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471], and Sections 5513 and/or 5514 of the Crimes Code [18 Pa. C.S. §5513 and/or §5514], in that on November 19, 2007, Licensee, by its servants, agents or employees, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

The investigation which gave rise to the citation began on March 13, 2007 and was completed on February 20, 2008. The notice of violation letter was mailed to Licensee on February 29, 2008.

Evidentiary hearings were held on this matter on October 7, 2008 and December 16, 2008, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Counts One & Two

1. Licensee is located in Washington County, Pennsylvania and holds Restaurant Liquor License Number R-AP-SS-15640. (N.T., 10-7-08 at 4).
2. On Saturday, June 2, 2007, at approximately 1:45 a.m., an intoxicated female minor with a date of birth of February 9, 1987, entered the upstairs portion of the licensed premises with two friends and was told to leave. (N.T. 10-7-08 at 24, 25, 40-42; N.T. 12-16-08 at 8, Exhibits L1, L2)
3. Licensee's bouncer took an I.D. from the minor before escorting her out of the licensed premises. (N.T., 10-7-08 at 66-57; N.T. 12-16-08 at 14-22, 28-29, Exhibits L-1, L-2)
4. At approximately 2:00 a.m., the minor female engaged in a fight with her boyfriend in the parking lot of the licensed premises and both were arrested by State Police Troopers. (N.T., 10-7-08 at 26-27, 29-30, 43-44, 58-59; N.T. 12-16-08 at 6-8, 12-13)
5. An enforcement officer made investigative visits to the licensed premises in April and May, 2007, received a State Police report for June 2, 2007, and participated in a November 19, 2007 open inspection, and interviewed the minor on February 12, 2008. (N.T., 10-7-08 at 9, 14, 18).
6. On Wednesday, November 19, 2007, at 1:30 p.m., an enforcement officer and a detail of police officers served a search warrant on the licensed premises for gambling devices and seized four video gambling machines, payoff slips and a football pool. (By Stipulation, N.T., 10-7-08 at 21-23)

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CONCLUSION OF LAW:

Count One -- Dismissed.

Count Two -- Sustained as charged.

DISCUSSION:

Neither party submitted a brief in this case.

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. Pa. Liquor Control Board v. PPC Circus Bar, Inc., 506 A.2d (Pa. Cmwlth. 1986); In Re: Omicron Enterprises, 449 A.2d (Pa. Cmwlth. 1982). The phrase “preponderance of evidence” has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black’s Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

As to Count One, the Bureau’s case is based on the testimony of the minor who was intoxicated before entering the premises. Licensee’s witnesses testified that she was not served and ordered her to leave. I give little weight to the female minor’s testimony due to her intoxicated condition on June 2, 2007. I give great weight to the licensee’s witnesses.

As such, I find that the Bureau has not met its burden of proof in this case. Count One is dismissed.

As to Count Two, counsel for Licensee stipulated to the facts set forth in the Bureau’s Pre-Hearing Memorandum and did not dispute the charge. As such, Count Two is sustained.

PRIOR RECORD:

Licensee has been licensed since September 3, 2003, and has one (1) prior violation, to wit:

Citation No. 06-1387. Fine \$150.00.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (tickets).  
March 31, 2006.

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 \$50.00 or more than \$1,000.00 or both for violations of the type

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found in this case.

As to Count Two, Licensee shall be treated as a repeat offender.

After due consideration of the circumstances giving rise to the citation and the Licensee's status as a first time offender, the following penalty shall be imposed as the penalty in this case:

Count One – Dismissed.

Counts Two -- \$600.00 fine.

ORDER:

THEREFORE, it is hereby ordered that Licensee, Shirley Ann Cossu, T/A Cozy Corner, pay a fine of \$600.00 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 UNTIL CASE IS CLOSED.**

Dated this 23rd day of February, 2009.



Robert F. Skwaryk, J.

**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

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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 17110-966

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