

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0681
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-369940
	:	
v.	:	
	:	LID - 56899
	:	
CLUB XS, INC.	:	
T/A CLUB XS	:	
36-38 W. 11 <sup>TH</sup> AVE.	:	
NORTH YORK	:	
YORK, PA 17404-2007	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-SS-EHF-16758	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
LICENSEE: L.C. HEIM, ESQUIRE**

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on April 24, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CLUB XS, INC., License Number R-AP-SS-EHF-16758 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on February 17, 2008, Licensee, by its servants, agents or employees, 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. §4-499(a)] in that on February 17, 2008, 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 February 17, 2008 and was completed on February 17, 2008; and notice of the violation was sent to Licensee by Certified Mail on March 14, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on February 23, 2009 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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 AND 2

1. Administrative Notice is taken that as of February 17, 2008, Licensee had been issued, by the Liquor Control Board, an Extended Hours Food Permit in accordance with Section 499(b) of the Liquor Code [47 P.S. §4-499(b)].

The following facts were established by written Stipulations submitted by the parties at the hearings (N.T. Exhibit C-3).

2. On Sunday, February 17, 2008 at 2:57 a.m., two officers of the Bureau arrived at the licensed premises and observed some 20 vehicles in the parking lot and numerous individuals entering and exiting the licensed premises (Stipulation 1).

3. The officers entered the licensed premises through an unlocked front door and observed a male patron holding and consuming a bottle of Miller Lite beer (Stipulation 2).

4. The officers observed two other male patrons at the other end of the bar who were each holding bottles of Miller Lite beer (Stipulation 3).

5. The officers identified themselves verbally and provided their badges to an employe at the bar counter. The employe went to get the owner of the licensed premises (Stipulations 4-5).

6. While the officers were waiting for the owner, a female employe who was behind the bar discarded three bottles of Miller Lite beer (Stipulation 6).

7. Licensee's corporate president and manager, Joel Weinstein, appeared and introduced himself to the officers (Stipulation 7).

CONCLUSIONS OF LAW:

1. Count No. 1 of the citation is **sustained**.
2. Count No. 2 of the citation is **sustained**.

DISCUSSION:

COUNT 1

Since the officers discovered patrons on the licensed premises in possession of and consuming alcoholic beverages after 2:30 a.m., the charge in this Count must be sustained.

Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] provides in part as follows:

(a) Except as provided for elsewhere, all patrons of a licensee shall be required to leave that part of the licensed premises habitually used for the serving of liquor or malt or brewed beverages to guests or patrons not later than one-half hour after the time the licensee is required by this act to cease serving liquor and/or malt or brewed beverages and shall not be permitted to have any previously served liquor or malt or brewed beverages in their possession, nor shall they be permitted to remove any previously served liquor or malt or brewed beverages from that part of the premises. Patrons of a licensee shall not be permitted to reenter that portion of the premises habitually used for this service of liquor and/or malt or brewed beverages between the time designated by this act for patrons to vacate the licensed premises and the time designated by this act when the serving of liquor or malt or brewed beverages allowed to begin unless the licensee has been granted a permit for extended hours food service.

Section 499(b) of the Liquor Code [47 P.S. §4-499(b)] reads as follows:

(b) A licensee may remain open between the hours of 2:00 a.m. and 7:00 a.m. for the purpose of serving food on any day if such licensee either possesses or is eligible to purchase a Sunday Sales

Permit and receives an Extended Hours Food license. The Board shall establish an annual fee for the Extended Hours Food license which shall not exceed \$50.00.

(Emphasis mine)

Licensee argues that the language of the last sentence of Section 499(a) (supra) which in pertinent part says “patrons of a licensee shall not be permitted to reenter that portion of the licensed premises habitually used for the serving of liquor or malt or brewed beverages between the time designated by this act for patrons to vacate the licensed premises and the time designated by this act when the serving of alcoholic beverages allowed to begin unless the licensee has been granted a permit for extended hours food service” provides an exception for licensee for the patrons found on the licensed premises by the officers at 2:57 a.m. I disagree.

All of the patrons found on the licensed premises by the officers were in possession of and consuming alcoholic beverages. Section 499(a) of the Liquor Code (supra) provides that Licensee must remove previously served alcoholic beverages from patrons not later than one-half hour after the time for serving such beverages has elapsed.

Section 499(b) (supra) provides for an extended hours food permit which allows licensee to permit patrons to remain on the premises for the purpose of serving food.

It is clear from the language of Section 499(a) (supra) and Section 499(b) (supra) that Licensee may have patrons on the premises after 2:30 a.m. only for the purpose of serving food. As Section 499(a) (supra) makes clear, patrons on the premises after the one-half hour period (2:30 a.m.) has elapsed, may not be permitted to possess alcoholic beverages.

Since the record establishes that in this case, the patrons found on the licensed premises were in possession of alcoholic beverages at 2:57 a.m., I conclude that the charge Count 1 has been sustained.

#### COUNT 2

Section 499(a) of the Liquor Code (supra) provides, as indicated above that licensee may not permit patrons to have previously served liquor and/or malt beverages in their possession after the time after one-half hour from the time that service of alcoholic beverages has elapsed (2:30 a.m.). In this case it is clear that at 2:57 a.m., there were patrons in possession of alcoholic beverages on the licensed premises on the date in question. I, therefore, conclude that Count 2 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since September 21, 2006, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 found in this case.

Counts 1 and 2 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.

Therefore, the penalty imposed shall be a fine of \$500.00.

ORDER

THEREFORE, it is hereby ordered that Licensee CLUB XS, INC., pay a fine of \$500.00 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 23<sup>RD</sup> day of March, 2010.



Daniel T. Flaherty, Jr., J. an

**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 submit stub with payment**

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make 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

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