

Mailing Date: JAN 26 2009

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

|                            |   |                         |
|----------------------------|---|-------------------------|
| PENNSYLVANIA STATE         | : |                         |
| POLICE, BUREAU OF          | : | Citation No. 08-0722    |
| LIQUOR CONTROL ENFORCEMENT | : |                         |
|                            | : | Incident No. W03-361609 |
| v.                         | : |                         |
|                            | : | LID - 51804             |
| KAREN L. LESHER            | : |                         |
| T/A THOROUGHBREDS          | : |                         |
| 10104 JONESTOWN RD         | : |                         |
| GRANTVILLE, PA 17028-8243  | : |                         |
|                            | : |                         |
|                            | : |                         |
| LEBANON COUNTY             | : |                         |
| LICENSE NO. R-AP-SS-16765  | : |                         |

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Andrew Lovette, Esquire

For Licensee  
Robert Leshner, PRO SE

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 8, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against KAREN L. LESHER, License Number R-AP-SS-16765 (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 February 29, 2008, Licensee, by her 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 September 19, 2007 and was completed on February 29, 2008; and notice of the violation was sent to Licensee by Certified Mail on March 21, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 12, 2008 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:

1. On February 29, 2008 an officer of the Bureau arrived at the licensed premises at 8:40 p.m. (N.T. 11).

2. After entering the licensed premises the officer's attention was drawn to a male patron who was approximately six to eight feet away from where the officer was sitting (N.T. 11).

3. The officer observed that the patron's speech was extremely loud and boisterous and very slurred. The officer observed him engage patrons at and around the bar in conversation. While he was doing this his tone of voice would reach a point where he was actually yelling at the patrons. His speech was slurred to the point that the officer could not understand half of what the patron was saying (N.T. 11-12).

4. While the patron was at the bar, he was in possession of a Yuengling Lager beer. Shortly after observing him talking to patrons, the patron walked over to another male patron who was about two stools down. The patron asked the second patron to buy another round of drinks before they left. The other patron agreed to order the drinks for him. The original patron then headed towards the bathroom (N.T. 12).

5. As the original patron turned to go from the bar to the bathroom, he fell into the wall with his left shoulder. He headed towards the bathroom. He made five steps walking towards the bathroom, sliding his shoulder down the wall in an attempt to maintain his balance (N.T. 12).

6. The patron in question entered the restroom. While he was in there, the officer could hear him yelling while the officer was seated at the bar (N.T. 12-13).

7. While the original patron was in the bathroom the bartender approached the second male patron. The second male patron asked the bartender for two shots. The bartender told the second patron that the original patron had been cut off. He had had too much to drink. However, the bartender indicated that he would serve the second patron a shot. The bartender did pour a shot for the second patron which he drank (N.T. 13).

8. A short time later, the original patron returned from the restroom. He approached the second patron at the bar who had ordered the drinks and asked him where his drink was. The second patron told him that he had been cut off by the bartender and was not allowed to have any more drinks (N.T. 13).

9. Shortly after that the original patron returned to his original position at the bar where his half full bottle of Yuengling Lager was sitting. He stood there and engaged people in conversation around the bar for a short time. At one point, he went to drink from the bottle. When he did, he actually fell over sideways into the patron next to him. This was the only thing that kept him from falling onto the floor (N.T. 13-14).

10. The original patron finished his bottle of Yuengling Lager. Shortly after he finished his bottle of lager, the bartender approached him and asked him if he wanted any beer to go before he left. The patron ordered two six packs of Yuengling Lager beer which the bartender retrieved from behind the bar. She placed it on the bar in front of him and told him the price. The original patron handed the bartender \$20.00. She went to the cash register, rang up the sale on the cash register which was \$14.00 and returned \$6.00 in change to the original patron (N.T. 14).

CONCLUSION OF LAW:

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

DISCUSSION:

The record in this case establishes that the patron in question was loud and boisterous, slurred his words and had great difficulty keeping his balance. In addition, he had been cut off by the bartender in this case for having too much to drink. Consequently, I have no trouble in concluding that the charge in the citation has been sustained.

PRIOR RECORD:

Licensee has been licensed since December 26, 2003, and has had three prior violations:

Citation No. 05-1591. 3 days suspension.

1. Sales to visibly intoxicated persons. July 4, 2005.

Citation No. 05-2748. Fine \$1,250.00.

1. Sales to a visibly intoxicated person. November 10, 2005.

Citation No. 06-1033. Fine \$1,500.00, 3 days suspension and RAMP training mandated.

1. Sales to a visibly intoxicated person. March 11, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case. Further, Section 471(c) requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

Under the circumstances of this case, the penalty imposed shall be a fine of \$2,500.00, a five days suspension and Licensee must remain RAMP compliant until **December 7, 2009**.

ORDER

THEREFORE, it is hereby ordered that Licensee KAREN L. LESHER, pay a fine of \$2,500.00 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.

IT IS FURTHER ORDERED that the restaurant liquor license (including all permits) of KAREN L. LESHER, License No. R-AP-SS-16765 be suspended for a period of five days **BEGINNING** at 7:00 a.m. on Monday, March 9, 2009 and **ENDING** at 7:00 a.m. on Saturday, March 14, 2009.

Licensee is directed on March 9, 2009 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on March 14, 2009 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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 must remain in compliance until **December 7, 2009**.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 21st day of January, 2009.



Daniel T. Flaherty, Jr., J.

an

**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

Citation No. 08-0722  
Karen L. Leshner