

Mailing Date: OCT 14 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0746
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-366968
v.	:	
	:	LID - 33901
HOME COURT SPORTS BAR, INC.	:	
T/A HOME COURT SPORTS BAR	:	
769-771 N. ALTER ST.	:	
HAZLETON, PA 18201-2964	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-7487	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement

Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
John Walton and
Martin Beccone
Corporate Officers

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 25, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Home Court Sports Bar, Inc., t/a Home Court Sports Bar (Licensee), License Number R-AP-7487.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on March 13, 2008, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated male patron.

An evidentiary hearing was conducted on September 5, 2008 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its Corporate Officers, Mr. John Walton and Mr. Martin Beccone.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on December 26, 2007 and completed it on March 13, 2008. (N.T. 11)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on March 18, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)
3. During the course of an investigation, Bureau Enforcement Officers conducted undercover visits four times. (N.T. 12-13)
4. On March 13, 2008, a Bureau Enforcement Officer arrived at the premises at 9:40 p.m., in an undercover capacity. On his way to the bar, the Officer noted a patron who was staring at him with what appeared to be a blank stare. The patron's eyes were bloodshot. His head was slanted to the left. It appeared to the Officer the patron was gazing at absolutely nothing. The Officer took a position at the bar approximately eight to ten feet away to continue his observations. The visibly intoxicated patron was situated between two other patrons. The visibly intoxicated customer had a difficult time sitting on his barstool without swaying. His head was bobbing up and down. The customer intermittently placed his hands on his face. He attempted to carry on a conversation with the other two patrons. The Officer could understand the two patrons but could not understand the visibly intoxicated patron. (N.T. 13-16)

1. Commonwealth Exhibit No. C-2, N.T. 8

5. The patron was completely incomprehensible. The patron placed his head in his hands followed by bringing his head back up. He swayed from side to side. There was a barmaid who appeared to be studying for a state examination. While the barmaid was studying, the visibly intoxicated patron finished his beer. The barmaid came to the visibly intoxicated patron's position, took his empty glass and filled it with a draft beer. (N.T. 16-17)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

The barmaid on duty testified she observed no signs of visible intoxication and did eventually cut the patron off. (N.T. 25-26)

It is quite evident the barmaid was more concerned with preparing for an examination than with assessing the sobriety of all patrons at all times. I therefore accord the Officer's testimony significant weight.

PRIOR RECORD:

Licensee has been licensed since August 19, 1994, and has had three prior violations (Commonwealth Exhibit No. C-3, N.T. 21):

Adjudication No. 95-2513. Fine \$200.00 and 3 days suspension.

1. Sales between 2:00 A.M. and 7:00 A.M.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
3. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 2:30 A.M.

Adjudication No. 96-2154. Fine \$250.00.

Used loudspeakers or devices whereby music could be heard outside.

Adjudication No. 05-0972. Fine \$300.00.

1. Engaged in unlawful discrimination in that you provided alcoholic beverages to female patrons free while charging full price to male patrons.
April 13, 2005.
2. Furnished an unlimited or indefinite amount of free alcoholic beverages for a period of two hours.
April 13, 2005.

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.

As Licensee has taken steps to avoid a repeat, I impose a \$1,000.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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.

R.A.M.P. Requirements

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 for assistance in the compliance process. 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 6th day of October, 2008.

Felix Thau, A.L.J.

pm

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.

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

Citation No. 08-0746
HOME COURT SPORTS BAR, INC.