

Mailing Date: OCT 30 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0937
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-368620
	:	
60 TOMS INC.	:	
60 E. BALTIMORE AVE.	:	LID - 54213
CLIFTON HEIGHTS PA 19018-2301	:	
	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. R-AP-SS-10927	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EDWARD B. McHUGH, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 22, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 60 Toms, Inc., License Number R-AP-SS-10927 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, September 15, 2009, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation, and to a summary of the facts.

The citation contains two counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1), in that on February 15, 2008, Licensee, by its 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.

The second count charges Licensee with violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471, in that on March 14, 2008, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

COUNT NOS. 1 AND 2

FINDINGS OF FACT:

1. On February 15, 2008 at 8:10 p.m., Enforcement Officer E. Gall, along with Officers Bernesky and Mullen entered the premises. Entering the bar to Officer's left was one larger rectangular bar that led to the rear of the premises. Upon walking around the front end of this bar and to the right was another room separated by a wall with two passage ways through it. This room contained two poker tables with poker chips set up for play. Officer Bernesky and Officer Gall proceeded to the bar, where one female bartender was rendering service of alcoholic beverages to approximately fifteen patrons (Exhibit B-3).

2. While seated at the bar, Officer Gall observed a Bud Light poster attached to the wall that read: Extreme Charity Poker Tuesdays & Fridays, sign ups at 8:30. The officer then observed two male patrons and one female patron enter the premises. The patrons proceeded to the other side of the bar, directly in front of the officers. One of the male patrons drew the officer's attention immediately because he was staggering as he proceeded to his seat at the bar. The officer also noticed that his eyes were half shut. This patron can be described as 5'9" tall, 210 pounds, with a large build. This patron had a brown beard and was wearing a camouflage hat over his hair. The patron was wearing a sweatshirt, but took it off once he arrived at the bar. He appeared to be having trouble taking off his sweatshirt. While taking off his sweatshirt, the patron pulled up his T-shirt revealing a tattoo on his chest. The patron had tattoos on his right arm, leading to his hand and another tattoo on his left forearm. He was also wearing blue jeans (Exhibit B-3).

3. Once the bartender completed service with another patron, the bartender walked to the aforementioned three patrons Officer Gall had been observing. The bartender immediately pulled out two twelve-ounce bottles of Budweiser beer and made one shot for the male patron described by the officer. This patron placed an undetermined amount of money on the bar. The bartender took the money and deposited it into the operational cash register. The male patron previously described started a conversation with his friend and his speech was slurred. This male patron then began a conversation with Officer Bernesky from across the bar. The patrons spoke loudly in a slurred voice and his eyes were half closed (Exhibit B-3).

4. During this conversation, the patron informed the officers that he was a tile layer and that he had a problem with another employee at work. He referred to the problem employee as "the nigger." Upon making observations throughout the bar area, the officer noticed attention being drawn to this patron, but the bartender and other employees did nothing to stop the patron from using this language and also cursing during conversation. The patron appeared to be visibly intoxicated. The patron continued to tell the officers about his job. During the conversation, the patron continued to slur his speech and sway from side to side. This patron was in full view of the bartender during the visit (Exhibit B-3).

5. While the conversation continued, a male called out for sign ups for a Poker tournament. Some of the patrons walked out of the bar area to the other room where the poker tables were located. The aforementioned male had a sign up board with him. While at the bar, Officer Gall asked the bartender if they were playing Texas Hold'em. She stated "yes" and the officer asked how much it was to play. The bartender stated that she wasn't sure, but if the officer purchased a certain amount of beverages, the officer would receive a ticket. The officer could enter the ticket in the game and play. She then directed the officer to the people playing the game (Exhibit B-3).

6. Officer Gall proceeded to the room where the Texas Hold'em game was being played. The officer observed two card tables, one of which was empty and the other occupied by ten patrons and one dealer. The male subject that has called for sign ups was off to the side. The officer asked this person how much it was to play. He stated that it cost \$5.00 to play. The officer then asked how much the officer could win. The male stated that \$4.00 of every \$5.00 is entered in the pot. The male stated that the number of players would determine the amount of winnings (Exhibit B-3).

7. Officer Gall returned to his seat across the bar. The officer then returned to his original position at the bar. The male whom the officer had earlier observed to be visibly intoxicated was still present conversing with the officers from across the bar. The bartender asked this male if he wanted another shot, to which he stated "yes." The bartender then proceeded to pull out a bottle of Romana Sambuca and fill this male patron's shot glass with the liquor. The male patron then consumed the shot of Sambuca. Officer Mullen observed the president of the premises, Michael F. Stern inside the premises during the visit (Exhibit B-3).

8. On March 14, 2008 at approximately 8:10 p.m., Officer Gall and Officer Rowe entered the premises. There was one female bartender rendering service of alcoholic beverages to fifteen patrons. The officer again observed a room where there were two poker tables set up for play. Seated at one of the tables were two males. One male was the same male the officer had observed running the poker tournament on his February 15, 2008 visit. The other male was seated in the dealer's seat (Exhibit B-3).

9. Officer Gall and Officer Rowe walked over to the tables and asked the two males how much it was to play in the poker tournament that night. The dealer stated it was \$5.00 to play. The dealer also stated that for an extra \$5.00, more chips could be purchased. Officer Rowe paid the \$5.00 to the dealer and signed a clipboard. At this point the poker tournament did not start due to lack of players. A short time later, once there were enough players paid and signed in, the poker tournament began. There were enough players to fill both poker tables. Officer Rowe was dealt \$2,500.00 in chips and began to play. Officer Rowe played a few rounds and finally lost the game. While Officer Rowe was playing the poker tournament, Officer Gall observed the male he had observed on February 14, 2008 who had appeared to be visibly intoxicated. On this date, this same male was able to walk straight and was not stumbling. Further, he was neither swaying side to side, nor speaking in a slurred loud manner. The officers departed the premises at 9:20 p.m. (Exhibit B-3).

CONCLUSIONS OF LAW:

Count No. 1 - On February 15, 2008, Licensee, by its 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, in violation of Section 493(1) of the Liquor Code, 47 P.S. Section 4-493(1).

Count No. 2 - On March 14, 2008, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises, in violation of Section 471 of the Liquor Code, 47 P.S. Section 4-471.

PRIOR RECORD:

Licensee has been licensed since June 10, 2005, and has no record of prior violations.

DISCUSSION:

After careful consideration, a monetary penalty shall be imposed and Licensee will be required to be R.A.M.P. certified.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count No. 2 of this case.

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$1,000.00 or more than \$5,000.00, or both, for violations of the type found in Count No. 1 of this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, 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.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,000.00.

Count No. 2 - \$400.00.

Accordingly, we issue the following

ORDER:

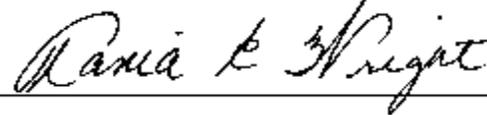
THEREFORE, it is hereby Ordered that Licensee, 60 Toms, Inc., License Number R-AP-SS-10927, pay a fine of One Thousand Four Hundred Dollars (\$1,400.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

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. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: [www.lcb.state.pa.us](http://www.lcb.state.pa.us)) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (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. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d).

**In order to insure compliance with this Order, jurisdiction of this matter is retained.**

Dated this 22<sup>ND</sup> day of October, 2009.



Tania E. Wright, J.

**NOTE:** 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 Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

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