

Mailing Date: NOV 24 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1167
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-372879
v.	:	
	:	LID - 45386
Y-DOOW IT INC	:	
1841 S 4 <sup>th</sup> ST	:	
ALLENTOWN PA 18103-4969	:	
	:	
LEHIGH COUNTY	:	
LICENSE NO. R-SS-11835	:	

JUDGE SHENKLE  
BLCE COUNSEL: Roy Harkavy, Esq.  
LICENSEE COUNSEL: Theodore Zeller, Esq.

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 3, 2008. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on April 26, 2008, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated female patron and one visibly intoxicated male patron.

A hearing was held on September 18, 2009, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

**FINDINGS OF FACT:**

1. On April 26, 2008, a liquor enforcement officer entered the licensed premises in an undercover capacity at about 9:40 p.m. He took a seat at the bar and placed an order with the bartender. Just as he was being served his attention was drawn to two patrons, a man and a woman, who were behaving in a loud and obnoxious manner, yelling at the bartender. They spoke with slurred speech and yelled obscenities (N.T. 6-7).

2. The man had a draft beer and a mixed drink in front of him, and he was drinking from both. The woman yelled at the bartender, "bend over and let me see that fucking ass." She said this several times, very loudly. The man was yelling "just throw me the fuck out of here, throw

me the fuck out of here. Where's my fucking ziti?" He had bloodshot eyes and spoke with slurred speech. The bartender served each of them a shot of Goldschlager liqueur (N.T. 8-9).

3. After serving the liqueur the bartender came near to the officer and the officer said to him, "man I need to get like those two, they're hammered." The bartender replied, "Yeah, it's their 26<sup>th</sup> wedding anniversary. They've been drinking since twelve." (N.T. 9-10).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Licensee produced as a witness the man described by the officer. He denied having spent nearly ten hours drinking, as the bartender's comment might have implied. I accept as probably true his testimony that he and his wife arrived in the premises at a little after 7:00 p.m. on the date in question. I am also willing to stipulate that the couple did not drink before 7:00 p.m. that day, as the man testified, because even so there was plenty of time for them to get plastered.

The anniversary couple are regular customers at the licensed premises, which is a short walk from their residence. The fact that they were not driving influenced the officer in that he decided to remain undercover, thinking they were unlikely to harm themselves or others while drunk on foot. I suspect it also influenced Licensee's serving personnel, who would probably reach the same conclusion and tend to indulge the tastes of such good patrons.

The man denied that he and his wife were intoxicated. Evidently he is proud of his ability to hold his liquor. The man freely admits to being obnoxious, and confirmed the officer's report as to the words used.

I do not need to assess a person's ability to drink, or find that such a person had a particular blood alcohol level, in order to conclude that the person was *visibly intoxicated*, as that phrase is used in the statute. The behavior and appearance of the patrons described in the Bureau's evidence was such that they should not have been served alcohol, even if the serving person knew them personally and actually believed that they were not drunk.

The fact is, these people *appeared* to be drunk and *behaved* as if they were. When a person with that *appearance* or *behavior* is served an alcoholic beverage, the law is violated.

PRIOR RECORD:

Licensee has been licensed since March 20, 2000, and has had four prior violations:

Citation No. 01-0102. \$1,050.00 fine.

1. Sales to a minor. December 6, 2000.
2. Minor frequenting. December 6, 2000.
3. Failed to constantly and conspicuously expose liquor license under a transparent substance. December 6, 2000.

Citation No. 02-2063. \$1,600.00 fine.

1. Sales to minors. October 12, 2002.
2. Minors frequenting. October 12, 2002.
3. Sold malt or brewed beverages in excess of 192 fluid ounces in a single sale for consumption off premises. October 12, 2002.

Citation No. 03-0962. \$1,000.00 fine and 1 day suspension.

1. Sales to minors. March 26 and April 30, 2003.

Citation No. 08-0092C. \$500.00 fine.

1. Sales to a minor. December 19, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Y-Doow It, Inc., License No. R-SS-11835, pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee, having complied with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management, as of June 20, 2008, shall remain in compliance for a period of one year from the date of 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).

Dated this 18<sup>TH</sup> day of November, 2009.



David L. Shenle, J.

**NOTICE: 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 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 accepted unless bank certified.. 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