

Mailing Date: MAY 11 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1255
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-365224
v.	:	
	:	LID - 43114
ARCH STREET HOTEL INC	:	
T/A ARCH STREET HOTEL	:	
120-122 ARCH ST	:	
CATASAUQUA PA 18032-2772	:	
	:	
NORTHAMPTON COUNTY	:	
LICENSE NO. H-AP-2854	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Roy Harkavy, Esq.
For Licensee: Charles E. Shoemaker, Jr., Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 9, 2008. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on December 12, 2007, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

A hearing was held on Friday, March 27, 2009, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

On December 12, 2007, a sober resident of this licensed hotel purchased five bottles of Bud Light bottled beer in a bucket of ice at Licensee's bar and took it to his room (N.T. 5-57).

CONCLUSIONS OF LAW:

The weight of the evidence did not prove that Licensee violated 47 P.S. §4-493(1).

DISCUSSION:

A lengthy investigation by the Bureau of Liquor Control Enforcement during a period of nearly five months, involving multiple undercover visits and premises surveillance, became distilled into a single instance which the Bureau interpreted as a violation of law.

This is the rare case, in which the Bureau's evidence yields not just a description of conduct said to be evidence of visible intoxication, but ultimately the living source of that evidence, the allegedly intoxicated person himself.

Rarer still, this living person has entirely credible explanations for each of the observations reported by the Bureau's undercover officer: his stumbling gait was the result of a back injury, his bloodshot eyes were caused by allergy. These explanations are corroborated by competent witnesses.

On top of this, I already lacked confidence in the sufficiency of the Bureau's evidence – aspects of the situation which I felt should naturally have been more memorable to the officer than they apparently were – and might have reached the same result even without evidence from the Licensee. Given all of the evidence presented, this was not a difficult case for me.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 08-1255 is DISMISSED.

Dated this 6th day of May, 2009.



David L. Shenle, J.

jb

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.