

Mailing Date: May 20, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 08-1298
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
NORTHEAST CONCESSIONS, L.P.	:	License No. R-15046
1280 STATE HIGHWAY	:	
ROUTE 315	:	
WILKES-BARRE, PA 18702-7002	:	

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OPINION

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appealed from the Adjudication and Order of Administrative Law Judge Felix Thau (“ALJ”), wherein the ALJ dismissed the citation.

The citation charged that, on March 25, 2008, Licensee, by its servants, agents or employees violated section 499(a) of the Liquor Code [47 P.S. § 4-

499(a)] by permitting patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, the Bureau contends that the ALJ committed an error of law in dismissing the citation. Further, the Bureau contends that the ALJ incorrectly applied the holding from Pennsylvania State Police, v. J.E.K., 680 A.2d 53 (Pa. Cmwlth. 1996), to the facts in the instant case. Specifically, the Bureau argues that the Licensee had the opportunity to see a patron in possession of the alcoholic beverages and had the duty to remove the alcoholic beverage from the patron by 2:30 a.m.

A review of the record reveals that on March 25, 2008, Frank DeAndrea, Jr., a Pennsylvania State Police Sergeant and the Commander of the Gaming Enforcement Office at Pocono Downs/Mohegan Sun, was on duty in his office at approximately 2:00 a.m. (N.T. 15-16). While in his office, Sgt. DeAndrea was viewing security camera videos and at approximately 2:35 a.m., he observed video showing a female patron walking the floor carrying two (2) bottles of what was later identified as twelve (12)-ounce Miller Lite beers. (N.T. 21-22). After viewing the female patron make her way down some steps, Sgt. DeAndrea made his way down a stairwell in an effort to find the patron. Sgt. DeAndrea anticipated that because it was after 2:30 a.m. someone from the casino security staff would have stopped her and taken the beverage from her by the time he caught up with her. (N.T. 22). Arriving downstairs, the Sergeant did not see the female patron and decided to backtrack through the main level of the casino, near the video poker machines where the female and her male companion had been seated. (N.T. 22). At approximately 2:41 a.m., Sgt. DeAndrea spotted a bottle of Miller Lite beer on a video poker machine, but was still not certain if the bottle was empty or not. The Sergeant walked toward one of Licensee's security officer's to request that the officer retrieve the bottle. (N.T. 23). The security officer, Jerry, was busy with two (2) other

patrons nearby. While Sgt. DeAndrea waited for Jerry to finish with the two (2) patrons, he observed the female take a drink from the beer bottle. (N.T. 25). Sgt. DeAndrea then approached Jerry and advised him of the situation and that Jerry needed to remove the beer from the female. (N.T. 25). At approximately 2:41 a.m., Sgt. DeAndrea observed Jerry approach the female patron, introduce himself and take the beer from her. (N.T. 25). Video recordings reviewed during the citation hearing reveal that at 2:26 a.m., the female patron and a male companion were sitting at a video poker blackjack machine, with two (2) drinks each. (N.T. 33). The video clip further reveals the female patron going into the bathroom at 2:28 a.m. with two (2) beers. (N.T. 34). The female exited the bathroom carrying one (1) beer shortly after 2:30 a.m. (N.T. 34). The female patron is seen proceeding past some security and housekeeping staff concealing the beer. (N.T. 35-36).

Nonetheless, after reviewing the totality of the factual environment in question, the ALJ found that the Bureau failed to prove that the Licensee permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. He cites J.E.K. for the proposition that he is eligible to consider all circumstances when deciding whether to apply strict liability in a particular

situation. In the instant case, the ALJ felt that strict liability was inappropriate because of the volume of Licensee's sales.

In its appeal, the Bureau argues that violations of the Liquor Code and its attendant laws and regulations are strict liability offenses. TLK, supra. The Board agrees. The only issue underlying this appeal is whether or not a patron was found to be in possession of an alcoholic beverage after 2:30 a.m. on March 25, 2008. Further, the record reveals the Licensee had ample time and opportunity to observe the patron in possession of the bottle of beer between 2:30 a.m. and 2:41 a.m. This opportunity existed via the video cameras, as well as undisputed testimony that there were security personnel and housekeeping staff moving throughout the casino floor when, in fact, there were very few patrons remaining after 2:00 a.m. (N.T. 18-20, 25, 28, 35-37). Licensee had ample opportunity to observe the actions of the female. The Licensee's failure to prevent a patron from possessing an alcoholic beverage at 2:41 a.m. clearly constitutes a violation of section 4-499(a) of the Liquor Code notwithstanding Licensee's diligence, the patron's duplicity or any of the other factors cited by the ALJ. [47 P.S. 4-499(a)].¹

¹ Section 4-499(a) of the Liquor Code prohibits casino licensees from permitting patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m., notwithstanding the fact that casino licensees are permitted to remain open to the public after 2:00 a.m. [47 P.S. 4-499(a)].

Based upon the foregoing, the Board must conclude that the ALJ's dismissal of the citation was an error of law and must be reversed.

ORDER

The decision of the ALJ is reversed.

The appeal of Bureau is sustained.

The matter is remanded to the ALJ for purposes of determining a penalty that is consistent with this opinion.

Board Secretary