

Mailing Date: FEB 20 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1406
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-372802
v.	:	
	:	LID - 43572
CHUCK'S SPORTS BAR, INC.	:	
T/A RUSSELL'S TAVERN	:	
537 S. MARKET ST.	:	
SELINGROVE, PA 17870-1819	:	
	:	
	:	
SNYDER COUNTY	:	
LICENSE NO. R-AP-SS-18940	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew Lovette, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 17, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against CHUCK'S SPORTS BAR, INC., License Number R-AP-SS-18940 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] in that on May 13, 16 and 20, 2008, Licensee, by its servants, agents or employees, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

The second count charges Licensee with violation of Sections 491(1), 492(2), 492(3) and 493(16) of the Liquor Code [47 P.S. §§4-491(1), 4-492(2), 4-492(3) and 4-493(16)] in that on May 13, 16 and 20, 2008, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages during a time when the restaurant liquor license was suspended at Citation No. 07-0261.

The third count charges Licensee with violation of Sections 401(a) and 407(a) of the Liquor Code [47 P.S. §§4-401(a) and 4-407(a)] in that on May 13, 2008, Licensee, by its servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

The investigation which gave rise to the citation began on April 9, 2008 and was completed on May 20, 2008; and notice of the violation was sent to Licensee by Certified Mail on June 2, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 9, 2008 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 537 South Market Street, Selinsgrove, PA 17870 by certified mail, return receipt requested and by first class mail on October 22, 2008. The notice set forth the date and time of the hearing as December 9, 2008 at 9:30 a.m., and the place of hearing as PA Department of Agriculture, 2130 County Farms Road, Montoursville, PA.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1, 2 AND 3

1. On April 8, 2008, this office issued an Adjudication at Citation No. 07-0261. The order in this Citation suspended Licensee's restaurant liquor license for a period of nine days beginning at 7:00 a.m. on Monday, May 12, 2008 and ending at 7:00 a.m. on Wednesday, May 21, 2008 (N.T. 8-9 and Exhibit C-4).

2. On May 13, 2008, an officer of the Bureau made a visit to the licensed premises at 9:35 p.m. to make sure that a suspension placard had been posted (N.T. 9).

3. As of 9:35 p.m. on May 13, 2008 the officer found the licensed premises to be open and operating and there was no suspension placard posted (N.T. 9). The officer entered the licensed premises and took a seat at the bar. There was a female bartender heard to be called Tonya, working. The officer ordered a Captain Morgan Spiced Rum and Diet Coca Cola mixed drink. Tonya served the mixed drink and charged the officer \$3.00. Tonya collected the money and placed it in a working cash register located behind the bar. The officer ordered a second Captain Morgan Spiced rum and Coca Cola at 9:50 p.m. Again she was charged \$3.00 for the mixed drink. It was served to her and the money then placed in the cash register located behind the bar (N.T. 9-10).

4. The officer observed that there were patrons in the bar when she arrived on May 13, 2008, and several patrons came in while she was there (N.T. 10-11).

5. At 9:58 p.m. on May 13, 2008, a male patron entered the bar and placed an order for three six-packs of 12-ounce bottles of Bud Light beer. Tonya served the patron the three six-packs (totaling 216 fluid ounces), and took \$21.00 from the patron and placed it in the working cash register behind the bar (N.T. 11).

6. On May 16, 2008, the officer again arrived at the licensed premises at approximately 1:30 p.m. She was there to check to see whether a suspension placard had been posted. She found that no suspension placard had been posted and the premises was open and operating (N.T. 12). The officer entered the licensed premises on May 16, 2008 and took a seat at the bar. She found a male bartender heard to be called Rob tending bar. She ordered a Mike's Hard Lemonade. Rob charged her \$2.50 for the drink. He served her the alcoholic beverage and placed the \$2.50 price in a working cash register located behind the bar (N.T. 12).

7. On May 20, 2008 the officer returned to the licensed premises at approximately 3:30 p.m. She checked again to see whether the Licensee had posted a suspension placard, and found that they had not posted such a placard. She entered the licensed premises and found the male bartender Rob again, working. She ordered a fuzzy navel which is an alcoholic mixed drink consisting of peach schnapps and orange juice. Rob collected the money for the drink and placed it in a cash register behind the bar. He then served her the drink. She left the premises at approximately 4:00 p.m.

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since March 8, 1999, and has had six prior violations:

Citation No. 00-0688. Fine \$1,000.00.

1. Sales to a minor.

Citation No. 04-1663. 4 days suspension.

1. Sales to a visibly intoxicated person. April 22, 2004.

Citation No. 05-1583. 9 days suspension.

1. Sunday sales between 2:00 a.m. and 11:00 a.m.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time. June 19, 2005.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 a.m. June 19, 2005.
4. Sales during at time when the restaurant liquor license was suspended. June 20 through 24, 2005.

Citation No. 06-2826. 10 days suspension and RAMP training mandated.

1. Sales to a visibly intoxicated person. November 3 and 4, 2006.

Citation No. 07-0261. 9 days suspension.

1. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. January 8, 10, 11, 12 and 16, 2007.
2. Posted notices on the licensed premises which stated that the licensed establishment was closed for a reason other than the suspension of the license. January 8, 10 and 16, 2007.

Citation No. 07-1170. Fine \$250.00 and one day suspension and thereafter until conditions corrected.

1. Operate the licensed establishment without a valid health permit or license. April 9, 2007.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Counts 1 and 3 of this case.

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 Count 2 of this case. Further, Section 471(c) requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$ 750.00 fine
Count 2 - \$1,500.00 fine and 3 days suspension
Count 3 - \$ 250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee CHUCKS SPORTS BAR, INC., pay a fine of \$2,500.00 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.

IT IS FURTHER ORDERED that Licensee's restaurant liquor license (including all permits) be suspended for a period of three days. However, the suspension period is deferred pending reactivation of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the dates for suspension.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 19th day of February, 2009.



Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 submit stub with payment

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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. 08-1406
Chuck's Sports Bar, Inc.