

Mailing Date: JAN 9 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1451
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-371566
v.	:	
	:	LID - 51766
MCKENNA'S PUB INC	:	
153 SNYDER AVE	:	
PHILADELPHIA PA 19148-2617	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-5571	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: Erik S. Shmukler, Esq.

For Licensee: no appearance

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 24, 2008. There are five counts in the citation.

The first count alleges that Licensee violated §§406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), on March 30, 2008, by selling, furnishing and/or giving alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The second count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on March 30, 2008, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The third count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on March 30, 2008, by permitting patrons to possess or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fourth count alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on May 9, 2008, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The fifth count alleges that Licensee violated §5.32(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.32(a), on March 14 and May 9, 2008, by permitting the use on the

inside of the licensed premises of a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

At the hearing scheduled for December 2, 2008, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period March 14 through May 9, 2008, and sent written notice of the results of its investigation to the licensed premises by certified mail on June 6, 2008 (N.T. 18-22, Exhibit B-1).

2. A copy of this citation was mailed to the licensed establishment by certified mail on June 24, 2008 (N.T. 22-23, Exhibit B-2).

3. A Notice of Hearing was mailed to the licensed establishment by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on October 17, 2008.

4. Liquor Enforcement Officer John Bernesky heard music emanating from the licensed premises at about 11:45 p.m. on March 14, 2008. The door of the premises was propped open. In the rear there was a DJ playing music, using loudspeakers. This was the source of the music the officer had heard outside (N.T. 4-6).

5. On March 30, 2008, Officer Bernesky entered the premises at about 2:17 a.m. The door was propped open. There were about 25 patrons. The officer purchased two bottles of beer for \$5.50. The other patrons were drinking alcoholic beverages also. At 2:30 the bartender locked the entrance door, near to where the officer was sitting. Since he was there, she asked him to let people out if need be. At about 2:35 a.m. two women began to leave, so Officer Bernesky opened the door for them (N.T. 6-8).

6. At 2:35 a.m. Officer Bernesky asked the bartender for two shots of Southern Comfort. She gave him the shots in two small plastic cups, but did not ask for payment. When the officer left at 2:40 a.m., another patron let him out. There were still the same number of patrons, still drinking (N.T. 8-9).

7. On May 9, 2008, Officer Bernesky again heard music emanating from the licensed premises at about 10:00 p.m. Again, the door was propped open, and the music was coming from a DJ through loudspeakers. The officer sat at the bar near an older gentleman who had difficulty grasping his beer bottle and bringing it to his lips. His movements were very slow. His head was bobbing up and down, and periodically he fell asleep briefly, then woke back up, took a drink, and put his head back down. This man talked to the officer, but the officer could not understand him, as his speech was slurred. His eyes were glassy. He dropped a five dollar bill on the floor and then had great difficulty retrieving it. He motioned to the bartender that he wanted another beer. She pointed out that he had only two dollars on the bar and would need three, then went away from him. He fished in his pocket for more money, finally found a one dollar bill, and put it on the bar. The bartender returned and saw the three dollars, took it and entered it in the cash register, then served this patron another beer (N.T. 11-15).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since September 17, 2003, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine, or both, for violations of the type found in this case. For violations of the type found in Count Nos. 1 and 4, any fine must be in the \$1,000.00 to \$5,000.00 range. For violations of the type found in Count Nos. 2, 3 and 5, any fine must be in the \$50.00 to \$1,000.00 range.

Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) as to the fourth count of the citation in these circumstances.

Penalties are assessed as follows:

Count No. 1 – a fine of \$1,000.00.

Count Nos. 2 and 3 (penalty merged) – a fine of \$1,000.00.

Count No. 4 – a fine of \$1,000.00 plus mandatory R.A.M.P. – certification.

Count No. 5 – a fine of \$300.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, McKenna's Pub, Inc., License No. R-AP-SS-OPS-5571, shall pay a fine of three thousand three hundred dollars (\$3,300.00) 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 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: 1-866-275-8237; 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).

Dated this 6th day of January, 2009.



David L. Shenkle, 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.

Detach Here and Return Stub with Payment

The fine must be paid by treasurer's check, cashier's check, certified check or money order. **Personal checks, which include business-use personal checks, are not acceptable.** 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

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McKenna's Pub, Inc.