

Mailing Date: OCT 23 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1487
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-375052
v.	:	
	:	LID - 58943
THE IRISH CASTLE & PUB, LLC	:	
122 N. CENTER ST.	:	
EBENSBURG, PA 15931-1622	:	
	:	
	:	
	:	
CAMBRIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-6101	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Emily L. Gustave, Esquire
Pennsylvania State Police
313 Mt. Nebo Road
Pittsburgh, PA 15237-1305

For Licensee
Shane Caylor
Sole Corporate Officer
and Manager

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 25, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Irish Castle & Pub, LLC (Licensee), License Number R-AP-SS-EHF-6101.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)]. The charge is that on May 24, 2008, Licensee, by servants, agents or employes, failed 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 second count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding May 24, 2008.

An evidentiary hearing was conducted on September 23, 2008 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. Licensee's Sole Corporate Officer and Manager, Mr. Shane Caylor appeared at the hearing.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began and ended its investigation on May 24, 2008. (N.T. 11)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 12, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-2, N.T. 8)

Count No. 1:

3. A Bureau Enforcement Officer arrived at the premises on Saturday morning, May 24, 2008 at 2:41 a.m. Through a window, the Officer noticed approximately six individuals in the licensed premises. The Officer also noticed the barstools were stationed on the bar in an upside down position. (N.T. 10-12)

1. Commonwealth Exhibit No. C-1, N.T. 8.

4. The Officer identified himself and was subsequently allowed to enter the premises. He spoke to an individual who identified himself as a shift manager. There were eight individuals on the premises, five of whom were determined to be employees. The three others were patrons. (N.T. 14-15)

5. A second Officer was involved in the inspection. He walked into the kitchen and noticed most of the equipment had been shut down. He did see a Nacho Cheese machine sitting on the preparation table but was unable to determine whether it was on or off. (N.T. 45-47)

6. One of the patrons arrived at the premises somewhere between 10:30 p.m. and 11:00 p.m. He ordered nachos with cheese and French fries to go at approximately closing time. (N.T. 52-54)

7. Any dispensing of alcoholic beverages ceased at 2:00 a.m. All alcoholic beverages were removed from all patrons by 2:30 a.m. An employe took an order for nachos with cheese and French fries to go. The Officers arrived at about the same time the food order occurred, so the employe did not turn on the deep fryer to cook the French fries. The French fries portion of the order was voided. (Licensee's Exhibit No. L-1, N.T. 78; N.T. 55-56)

8. Licensee had a menu available to customers at all times in question. (Licensee's Exhibit No. L-2, N.T. 85)

9. I take Official Notice that Licensee has been issued an Extended Hours Food Permit.

Count No. 2:

10. The Officer returned to the premises at 6:18 p.m., later the same day to conduct an unannounced administrative inspection.² The employe with whom the Officer spoke indicated Licensee had no records. That employe was also unable to produce records. (N.T. 22-25)

11. Even though the Officer was advised by the employe on duty that there were no records, in fact, there were records on the premises. The employe on duty did not know where the records were. (N.T. 84-85)

2. Please see my comments in: *Molly's Pub, Inc.*, Adjudication No. 06-2551, www.lcb.state.pa.us.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. The Bureau has **failed** to prove that on May 24, 2008, Licensee, by servants, agents or employes, failed 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.

Count No. 2:

3. The Bureau has **failed** to prove Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding May 24, 2008.

DISCUSSION:

As Licensee had an Extended Hours Food License and was in the process of serving food, Count No. 1 must be dismissed. As to Count No. 2, there were records on the premises but the person in charge at the time of the administrative inspection, was not aware of that.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 08-1487, issued against The Irish Castle & Pub, LLC, is hereby DISMISSED.

Dated this 17th day of October, 2008.

Felix Thau, A.L.J.

pm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.