

Mailing Date: FEB 17 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1492
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-368653
	:	
JACOB'S INC	:	
T/A JACOB'S GABLE INN	:	LID-54267
4350 US HWY 322	:	
SOUTH SHENANGO TWP	:	
JAMESTOWN PA 16134-4608	:	
	:	
	:	
CRAWFORD COUNTY	:	
LICENSE NO. R-AP-SS-EHF-17538	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement:
Emily L. Gustave, Esquire

For Licensee:
John Demmler, Pro Se

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 (hereinafter Bureau) against Jacob's, Inc., T/A Jacob's Gable Inn, License Number R-AP-SS-EHF-17538 (hereinafter Licensee).

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)], in that on March 22, 2008, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated male patron and one (1) visibly intoxicated female patron.

The investigation which gave rise to the citation began on January 29, 2008 and was completed on May 18, 2008. The notice of violation letter was mailed to Licensee on June 11, 2008.

An evidentiary hearing was held on this matter on January 14, 2009, in Erie, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Crawford County, Pennsylvania and holds Restaurant Liquor License Number R-AP-SS-EHF-17538. (N.T. 4).
2. On Saturday, March 22, 2008, at approximately 1:30 a.m., an enforcement officer entered the licensed premises and found a bartender rendering service of alcoholic beverages to approximately ten patrons. (N.T. 8).
3. The officer sat at the bar and a female patron, Connie, with a partial glass of beer, sat next to him in an intoxicated state with slurred speech, alcohol on her breath, and red and glossy eyes. (N.T. 9, Exhibit C-3).
4. The female patron got up to make a phone call and staggered and swayed while walking. (N.T. 10).
5. Licensee's president, seated at the bar, observed the female patron's behavior. (N.T. 10-12, Exhibit C-3).
6. An intoxicated male patron, Chuck, sat at the bar, began talking with Connie, and ordered a Jack Daniels and coke mixed drink for himself and Connie. (N.T. 12-13).
7. The bartender served the intoxicated female patron a double Jack Daniels whiskey and coke. (N.T. 12).
8. During the course of his investigation, the officer made four additional visits to the premises and found no violations. (N.T. 31-32).

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified in detail as to observing an intoxicated female patron called "Connie" at the licensed premises for approximately thirty minutes, during which, she was served a Jack Daniels and coke mixed drink by Licensee's bartender.

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Licensee's president testified that the patron was a regular and denied that she was drunk. He also disputed most of the enforcement officer's testimony including where he sat and whether a band was playing. I believe Licensee is confused about the date of the officer's visit.

A Liquor Control Board Agent (BLCE Enforcement Officer) is competent to testify that a patron exhibited the signs of visible intoxication when he was served alcoholic beverages by Licensee's employee. Laukemann v. Pa. Liquor Control Board, 475 A.2d 955 (Pa. Cmwlth, 1984); Roylene v. Pa. Liquor Control Board, 542 A.2d 217 (Pa. Cmwlth, 1988).

I find the enforcement officer's testimony to be credible and that the Bureau has met its burden of proof in this case.

As such, the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since February 24, 2005, and has one (1) prior violation, to wit:

Citation No. 07-1559. 4 days suspension and R.A.M.P. training mandated.

1. Sales to a minor.
September 22, 2006.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

I take administrative notice that Licensee obtained R.A.M.P. certification on May 23, 2008.

After due consideration of the circumstances giving rise to the citation and the Licensee's citation history, the following penalty shall be imposed as the penalty in this case:

\$1,500.00 fine and maintain R.A.M.P. certification for a period of one year from the date of this order.¹

ORDER:

THEREFORE, it is hereby ordered that Licensee, Jacob's, Inc., T/A Jacob's Gable Inn, pay a fine of \$1,500.00 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.

¹[47 P.S. §4-471(d)], effective June 12, 2006.

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IT IS ADDITIONALLY ORDERED that Licensee remain in R.A.M.P. compliance for one year from the date of this ORDER.

Failure to comply with this Order will be grounds for modification of penalty in this case, and for that purpose jurisdiction is retained. Failure to comply may also constitute ground for issuance of a new citation as authorized by 47 P.S. §4-471(e).

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 11th day of February, 2009.



Robert F. Skwaryk, J.

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.

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 17110-966

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