

Mailing Date: OCT 02 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1640
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-371804
v.	:	
	:	LID - 10788
S. & B. RESTAURANT, INC.	:	
T/A THE WOODLANDS, AN INN	:	
1073 RTE. 315	:	
WILKES-BARRE, PA 18702-6926	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-3050	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** Craig A. Strong, Esquire  
**LICENSEE:** Steven M. Greenwald, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on July 16, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against S. & B. Restaurant, Inc., t/a The Woodlands, An Inn (Licensee), License Number R-AP-SS-3050.

The citation<sup>1</sup> charges Licensee with violations of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on March 20 and 21, 2008, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

An evidentiary hearing was conducted on August 27, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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1. Commonwealth Exhibit No. C-2, N.T. 16.

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 its investigation on March 27, 2008 and completed it on May 24, 2008. (N.T. 17)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on June 20, 2008, as amended. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 16)

3. In the early morning hours of March 21, 2008, a Municipal Police Officer was on duty in full uniform and driving a marked vehicle. The Police Officer was dispatched to the licensed premises. He discovered a nineteen year old in the parking lot. The nineteen year old was disheveled. He had a strong odor of alcohol on his breath. He displayed slurred speech, bloodshot and glassy eyes. (N.T. 40-46)

4. The nineteen year old was born on February 20, 1989. He went to the licensed premises on March 20, 2008 to attend the "Under Twenty-One" operation within the licensed premises. (N.T. 51-55)

5. One of Licensee's security personnel was called to assist in dealing with the nineteen year old minor inside the subject premises. The Security Officer apprehended the minor before he entered the "adult" portion of the licensed premises. The minor was staggering and causing problems. His behavior was such that additional security personnel were called to the scene. The minor attempted to steal a bottle of vodka at the entrance way to the portion of the premises specified for adults. This behavior prompted the security personnel to call the local police. (N.T. 90-94)

CONCLUSIONS OF LAW:

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

2. The Bureau has **failed** to prove that on March 20, 21, 2008, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

DISCUSSION:

I have evaluated the minor's testimony and demeanor. In light of the contradicting testimony presented by Licensee, I find the minor not to be worthy of any credibility. Moreover, because he was clearly drunk (N.T. 81-83) that evening and had no memory of what transpired at the hospital after his arrest, even if I found the witness to be telling the truth as he believes it to be, I would not have accorded his testimony any significant weight. (N.T. 75-76) *Pleasant Valley Recreation Center, Inc.*, Citation No. 08-1520 and *RL Fake, LLC*, Citation No. 08-2550.

PENALTY:

Accordingly, I dismiss the citation.

ORDER:

NOW THEREFOR, it is ordered that Citation No. 08-1640, issued against S. & B. Restaurant, Inc., t/a The Woodlands, An Inn, is DISMISSED.

Dated this 25<sup>TH</sup> day of September, 2009.

  
Felix Thau, A.L.J.

pm

**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.**