

Mailing Date: MAR 10 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1787
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-376840
v.	:	
	:	LID - 38605
DALE J. SPENCER ENTERPRISES,	:	
INC.	:	
T/A SPENCER'S WESTERN CAFE	:	
756 STATE RT. 118	:	
SWEET VALLEY, PA 18656-9785	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-15167	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Craig A. Strong, Esquire
Pennsylvania State Police
7448 Industrial Parkway
Macungie, PA 18062

For Licensee
Robert McGuinness, Esquire
309 South Main Street
P.O. Box 87
Athens, PA 18810

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 8, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Dale J. Spencer Enterprises, Inc., t/a Spencer's Western Cafe (Licensee), License Number R-AP-SS-15167.

This citation¹ contains two counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on July 5, 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) visibly intoxicated male patron.

The second count charges Licensee with a violation of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on July 5, 2008, Licensee, by servants, agents or employes, used, or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

An evidentiary hearing was conducted on February 5, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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 June 25, 2008 and completed it on July 5, 2008. (N.T. 7-8)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 15, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

Count No. 1:

3. On July 5, 2008, a Bureau Enforcement Officer entered the premises in an undercover capacity. The Officer noticed an individual who had difficulty maintaining his balance. He was swaying from side to side and front to back. On several occasions, the customer had to maintain his balance by leaning onto other patrons and furniture. When he walked, he displayed a staggered gait. His speech was severely slurred. His eyes were bloodshot. The customer spoke to the bartender. The customer appeared to be flirting with the bartender. The bartender remarked: "You're just a dork when you're drunk." (N.T. 12-15)

1. Commonwealth Exhibit No. C-2, N.T. 9.

4. The bartender served the patron a mug of draft beer. (N.T. 16)
5. The Officer observed the visibly intoxicated person on other undercover visits to the premises. The Officer was able to note differences in the customer's speech patterns between those prior visits and that of July 5, 2008. (N.T. 19-22)

Count No. 2:

6. There was a live band performing that evening. The Officer departed the premises and entered his vehicle traveling a distance of approximately 200 yards east of the premises. While sitting in the vehicle with the engine running, the Officer heard the amplified music escaping the premises. (N.T. 16-17)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged.

DISCUSSION:

The most telling observation was that made by the bartender when she remarked the customer was drunk before she served him. I accord the Officer's observation significant weight.

PRIOR RECORD:

Licensee has been licensed since July 24, 1996, and has had fourteen prior violations (Commonwealth Exhibit No. C-3, N.T. 79):

- Adjudication No. 97-0443. Fine \$100.00.
Sold malt or brewed beverages in excess of 192
fluid ounces for consumption off premises.
- Adjudication No. 97-0966. Fine \$150.00.
Used loudspeakers or devices whereby music could
be heard outside.

Adjudication No. 98-0236. Fine \$500.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine).

Adjudication No. 03-2071. Fine \$300.00.

Used loudspeakers or devices whereby music could be heard outside.
November 22, 2003.

Adjudication No. 04-0498. Fine \$400.00.

Used loudspeakers or devices whereby music could be heard outside.
March 6, 2004.

Adjudication No. 04-1489. Fine \$1,350.00.

1. Sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.
On 12 dates between May 19 and July 15, 2004.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pool).
July 28, 2004.
3. Used loudspeakers or devices whereby music could be heard outside.
June 26, 2004.

Adjudication No. 04-1728. Fine \$1,250.00.

Sales after the restaurant liquor license expired on August 31, 2004 and had not been renewed and/or validated.
September 11 and 20, 2004.

Adjudication No. 04-1875. Fine \$200.00.

Failed to appoint a Board approved full time manager for the licensed premises.
Subsequent to May 1, 2004.

Adjudication No. 05-0163. Fine \$100.00. Fine not paid and license suspended 1 day and thereafter until fine paid.
Issued worthless checks in payment for malt or brewed beverages.
December 22, 2004.

Adjudication No. 05-1124. Fine \$750.00.
Used loudspeakers or devices whereby music could be heard outside.
May 6 and 7, 2005.

Adjudication No. 06-0742. 3 days suspension.
Sales to a minor.
February 25, 2006.

Adjudication No. 06-2110. Fine \$1,200.00, 1 day suspension and RAMP training mandated.
Sales to a visibly intoxicated person.
August 17, 2006.

Adjudication No. 07-2579. Fine \$250.00.
Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.
September 23, 2007.

Adjudication No. 07-2843. Fine \$100.00.
Used loudspeakers or devices whereby music could be heard outside.
October 27, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 1 and 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 Count No. 2 in this case.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudications (04-1728, 06-2110 and 06-2110), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

I impose:

Count No. 1 – 5 days suspension.

Count No. 2 – \$250.00 fine.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$250.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant liquor license (including all permits) of Dale J. Spencer Enterprises, Inc., t/a Spencer's Western Café, License No. R-AP-SS-15167, be suspended for a period of five days, **BEGINNING** at 7:00 a.m., on Monday, May 4, 2009, and **ENDING** at 7:00 a.m., on Saturday, May 9, 2009.

Licensee is directed, on Monday, May 4, 2009, at 7:00 a.m., to place a placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised, if replacement placards are needed for any reason, they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized, on Saturday, May 9, 2009, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

R.A.M.P. Requirements

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. Licensee must remain in compliance for a period of one year from the mailing date of this Adjudication.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 3rd day of March, 2009.



Felix Thau, A.L.J.

pm

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, Pennsylvania 17110-9661

Citation No. 08-1787
DALE J. SPENCER ENTERPRISES, INC.