

Mailing Date: MAY 28 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1841
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-373996
v.	:	
	:	LID - 50241
120 EAST ALLEN, INC.	:	
T/A SNAPPERS BAR & GRILL	:	
120 E. ALLEN ST.	:	
MECHANICSBURG, PA 17055-3303	:	
	:	
	:	
CUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-18815	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Tara L. Patterson, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Steve C. Nicholas, Esquire
Northwood Office Center
2215 Forest Hills Drive
Suite 37
Harrisburg, PA 17112-1099

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 28, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against 120 East Allen, Inc., t/a Snappers Bar & Grill (Licensee), License Number R-AP-SS-18815.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on May 8, 2008, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) visibly intoxicated male patrons.

An evidentiary hearing was conducted on April 14, 2009 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 May 7, 2008 and completed it on July 9, 2008. (N.T. 8)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on July 25, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

3. On May 8, 2008, a Bureau Enforcement Officer entered the premises in an undercover capacity. She noticed a customer who was swaying as he stood. She drew nearer to the customer to observe him carefully. He was stammering and mumbling. His eyes were completely bloodshot. The targeted customer (TC) was attempting to get the attention of a female customer sitting next to him. She turned away. Holding onto the back of the female customer, the TC negotiated his way to her opposite side. (N.T. 9-11)

4. As he went to lean against the bar to talk to the female customer, the TC attempted to put his elbow down on the bar. He misjudged the distance and stumbled onto the bar awkwardly. He was smoking a cigarette which he placed approximately twelve inches from the female customer who again turned her stool away from the TC (N.T. 11-12)

5. The TC stood close to the female customer by moving to her side. A male patron entered the premises, greeted the female and gave her a hug and a kiss. The TC yelled in a severely slurred speech: "Okay then." As the TC walked behind the Officer, he bumped into her. The Officer detected a very strong odor of alcohol, inter-mixed with cologne. (N.T. 13-14)

1. Commonwealth Exhibit No. C-2, N.T. 6.

6. The TC returned to what was his original location at the bar. He removed a cigarette from a pack with difficulty. He attempted to light the cigarette. His arms were swaying. The lighter went off and on. He began to smoke the cigarette but it was not lit. The TC apparently recognized the cigarette was not lit. He picked up the lighter. He placed his elbow on the bar. He kept the flame of the lighter still but moved his cigarette, which was in his mouth, towards the lighter. The flame went out several times. He readjusted to attempt to light his cigarette but he was still swaying. There were several singe marks on the cigarette. He lit the cigarette in the middle rather than at the end. (N.T. 14-15)

7. The TC engaged a sober patron seated at the bar in a discussion. He was mumbling. He asked the sober customer, in a slurred speech, to tell him his age. The younger customer replied to the question. The TC lowered his head as if he was falling asleep. His head snapped back up again. This occurred several times in less than approximately 30 seconds.

8. The younger customer turned towards the Officer away from the TC. The TC continued to mumble to himself while his head was bobbing up and down. He became more subdued. The disc jockey played a more upbeat song. The TC came "alive." He yelled. He was very loud. He made his way onto the dance floor. He raised both arms. He swayed. He staggered. After the song ended, the TC stumbled back to his seat at the bar. He resumed attempting to drink from a glass which was empty. (N.T. 21-26)

9. After the bartender served the TC a mixed drink at 10:00 p.m., the TC grabbed onto the barstool and stood up. The drink was in his hand. Directly behind the TC, there is an elevated portion of the premises which is about five feet away from the barstool. The elevation is an approximate six to eight inch step. There are tables in the elevated area. There was a group of female customers in that area. The TC went to approach them. He tripped on the step. He stumbled and swayed and began to talk to those customers. He was mumbling, stammering, staggering and swaying. He remained there for several minutes until two sober male customers stood very close to him. The TC returned to his seat at the bar stumbling back down the step. (N.T. 26-27)

10. While seated at the bar, TC wrestled with a pack of cigarettes. He tugged a cigarette out. Instead of moving a lighter to the cigarette, he moved his face to the lighter. He managed to light the cigarette but on the side and not at the end. He took several drags from the cigarette and put it in the ashtray. He bowed his head down and was quiet for several moments. He became awake again. He pulled out another cigarette from the pack and put it into his mouth. (N.T. 26-27)

11. At 10:20 p.m., the TC consumed the remainder of his mixed drink. He took a five dollar bill and placed it across the top of the empty glass. He picked up his cigarettes, his lighter and he walked around behind the Officer. There were customers dancing on the dance floor. The TC stopped at the dance floor. He was swaying. The TC began dancing between two female customers. He was stumbling and staggering. The Officer lost sight of the TC as he either departed the premises or went to the restroom. (N.T. 28-29)

12. The bartender took the \$5.00 bill from the top of the glass, refilled the glass with ice and a mixed drink. The bartender placed the drink back on the bar at the position where the TC had been sitting. A few minutes later, the bartender asked a customer whether or not the TC left. The bartender took the mixed drink and poured it down the sink. Several minutes later, the TC returned apparently from the bathroom. He staggered towards the Officer and returned to his seat. He motioned to the bartender as if he was requesting another drink. The TC removed a second five dollar bill. The bartender poured the TC a fresh mixed drink. (N.T. 29-30)

13. While seated at her location at the bar, the Officer observed a second patron who displayed signs of visibly intoxication (TC2). TC2 was slouching, slumping, twisting and jerking. Other customers moved away from him. TC2 was yelling, hooting and hollering. He transitioned from being quiet and loud. The bartender served TC2 a mixed drink. The Officer observed TC2's eyelids were almost closed. His complexion was flushed. He was swaying. He was staggering. He was yelling. The Officer was unable to understand most of what TC2 said. He contorted his body and face. He danced strangely to the music. He transitioned often from sitting at the barstool and standing up. (N.T. 30-32)

14. As other customers got closer to him, TC2 twisted, jerked and bumped. He made loud noises and became docile again. When the disc jockey played an upbeat song, TC2, in an attempt to stand up, began to teeter and fall backward. He was about to fall into two other customers who were standing behind him. The two kept TC2 from falling to the ground. They hoisted TC2 back up. TC2 began to mouth the lyrics loudly. He played an air guitar. He stumbled forward. He stumbled back. He was yelling. He was screaming. Every time he tilted his head back to sing, he began to stumble back again. The two customers assisted TC2 in standing up. (N.T. 33-34)

15. TC2 wanted to hug the two gentlemen. He went to lean on them. They pushed him away. The two picked up their beverages and, with their companions, moved to a different location. TC2 ordered and was served a mixed drink by the bartender. TC2 brought his mouth to the drink which was just served him rather than bringing the drink to his mouth. TC2 stuck his mouth into the glass and began to suck on it. He dragged the mixed drink closer to him. While in a sitting position, TC2 stuck his face into the glass without bringing it up to his face. (N.T. 34-36)

16. He made a third attempt to drink from the mixed drink. TC2 brought the glass to his mouth and began sipping well before the drink was in the appropriate position to do so. He spilled some of the drink onto the front of his shirt. TC2 stood, with glass in hand, and began to walk behind the Officer. He staggered. He was bumping into people. Other customers stepped away from him. He leaned against a pole. His eyes were mostly drooped. He began to slide down the pole. His legs almost buckled underneath him but he was able to regain his balance and pushed himself up. He began to stare at the stain on his shirt. As he did so, he turned his glass and spilled the contents of the drink on his sleeve. One bartender saw what was going on and, while pointing to TC2, directed a second bartender not to serve TC2 again as he couldn't stand up. (N.T. 37-38)

CONCLUSIONS OF LAW:

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

DISCUSSION:

If ever there was a presentation that might be considered as a text book version of proving a charge of serving a visibly intoxicated patron, this case qualifies as an excellent candidate to become that model.

The Bureau's presentation and witness observations were thorough, detailed and complete. The Officer's testimony was methodical, orderly and relatively easy to follow. The Officer described her observations with adverbs and adjectives that went well beyond the stock, boiler plate testimony such as blood shot eyes and staggering gait. The Officer also demonstrated the behavior she was describing as she was testifying. These demonstrations, which I described for purposes of a complete record, helped immensely as they provided a visual aid for me to appreciate the Officer's observations.

PRIOR RECORD:

Licensee has been licensed since September 27, 2002, and has had two prior violations (Commonwealth Exhibit No. C-3, N.T. 48):

Adjudication No. 04-2175. Fine \$1,500.00.
Sales to visibly intoxicated persons.
November 4 and 5, 2004.

Adjudication No. 05-1241. Fine \$250.00.
Used loudspeakers or devices whereby music
could be heard outside.
May 13, 2005.

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 impose a \$2,000.00 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 \$2,000.00 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.

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 20th day of May, 2009.


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.

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

Citation No. 08-1841
120 EAST ALLEN, INC.