

Mailing Date: MAY 04 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-1898
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-377676
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  
Nadia L. Vargo, Esquire  
Pennsylvania State Police  
313 Mt. Nebo Road  
Pittsburgh, PA 15237-1305

For Licensee  
Shane Caylor  
Member

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 11, 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.

The citation<sup>1</sup> charges Licensee with a violation of Sections 401(a) and 407(a) of the Liquor Code [47 P.S. §4-401(a) and §4-407(a)]. The charge is that July 13, 2008, Licensee, by servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

An evidentiary hearing was conducted on March 25, 2009 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. Licensee was represented by its Member, Mr. Shane Caylor.

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 completed its investigation on July 13, 2008. (N.T. 11)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on July 30, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 10)

**Bureau's Version**

3. On July 13, 2008, two Bureau Enforcement Officers entered the subject premises at about 3:00 p.m. They were in an undercover capacity. At approximately 3:20 p.m., two patrons entered the premises. One of the two ordered a twelve pack of Budweiser and a twelve pack of Bud Light, twelve ounce cans, for a total of 288 fluid ounces. One of the patrons also ordered two shots of liquor. (N.T. 13-15; 25-26)

4. The bartender provided the two, one shot of liquor each. She then obtained the two, twelve packs of beer. The bartender told the two patrons they would have to carry them out separately. The Officer was able to look at the computer screen. He saw the figure: "\$28.00" on the screen. As they were preparing to leave, the two asked for one more shot each. The bartender announced she had just entered the transaction into the system. One of the two placed some money on the bar. The two patrons consumed one additional shot each. Each of the two carried one of the twelve packs out the door. (N.T. 16-17)

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1. Commonwealth Exhibit No. C-2, N.T. 10.

### **Licensee's Version**

5. The two customers did request two, twelve packs of beer. The bartender told the two that Licensee did not sell twelve packs. The barmaid sold the patrons two, six packs of twelve ounce bottles of beer and four shots of liquor. (N.T. 61-65, Licensee's Exhibit No. L-1). The sales receipt confirms the barmaid's testimony. Licensee does not routinely sell cans of beer except for rare occasions. Those cans are ten ounce containers. (N.T. 81-84)

6. Licensee returned unsold ten ounce cans of beer in twelve packs to the Importing Distributor/Distributor (Licensee's Exhibit No. L-2 and L-3, N.T. 81-82)

### 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 July 13, 2008, Licensee, by servants, agents or employes, sold malt or brewed beverages in excess of 192 fluid ounces in a single sale to one person for consumption off premises.

### DISCUSSION:

The Bureau's testimony was confirmed, inside the licensed premises, by two Enforcement Officers whose testimony was consistent and with that of two Officers who were sitting in a vehicle on the outside of the premises.

I entered two versions of the events in the Findings of Fact as I believe all witnesses were truthful. Because Licensee's documentation, confirmed a sale consistent with the testimony on behalf of Licensee, I must side with Licensee.<sup>2</sup>

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2. I have no explanation for the testimonial inconsistency and I will not engage in manufacturing one.

ORDER:

NOW THEREFORE, it is ordered and decreed that Citation No. 08-1898, issued against The Irish Castle and Pub, LLC, is hereby DISMISSED.

Dated this 27<sup>TH</sup> day of April, 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.**