

Mailing Date: MAY 19 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2342
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-380608
v.	:	
	:	LID - 57570
OLIVIA AND CARTER, INC.	:	
T/A PAS PLACE	:	
413 JONESTOWN RD.	:	
JONESTOWN, PA 17038	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. H-AP-SS-2648	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
Ex-Parte

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 16, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Olivia and Carter, Inc., t/a PAS Place (Licensee), License Number H-AP-SS-2648.

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 on September 5, 2008, Licensee, by servants, agents or employees, 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 April 14, 2009 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee did not appear personally or have any representation.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. A citation hearing notice was mailed by the Office of Administrative Law Judge on February 26, 2009 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing. The Notice, sent by certified mail, was signed for on March 2, 2009.
2. On February 26, 2009, I issued a Pre-Hearing Order to Licensee by first class mail directing Licensee to submit its pre-hearing memorandum. That Order reiterated the date, time and place of hearing. (N.T. 4)
3. The Bureau began its investigation on September 3, 2008 and completed it on September 6, 2008. (N.T. 7)
4. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on September 22, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 20)
5. On the date in question, at approximately 11:35 p.m., a Bureau Enforcement Officer was in the licensed premises in an undercover capacity. The Officer noticed two individuals approach the bar counter. One of the individuals ordered four, twelve packs of twelve ounce cans of beer (totaling 576 fluid ounces). The transactions were entered into the cash register by the employe as a single sale. (N.T. 10-14)
6. After the incident, the employe acknowledged selling what amounted to two full cases of beer to one customer and indicated she did not know that it was illegal. (N.T. 16)

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1. Commonwealth Exhibit No. C-2, N.T. 20.

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.

PRIOR RECORD:

Licensee has been licensed since December 22, 2006, and has had five prior violations (Commonwealth Exhibit No. C-5, N.T. 25):

Adjudication No. 07-2556. Fine \$1,250.00 and RAMP training mandated.

Sales to a visibly intoxicated person.  
August 4, 2007.

Adjudication No. 07-2557X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed beverages.  
August 8 and 9, 2007.

Adjudication No. 07-3057X. Fine \$250.00.

Issued worthless checks in payment for malt or brewed beverages.  
October 19, 2007.

Adjudication No. 08-1207. Fine \$350.00.

Used loudspeakers or devices whereby music could be heard outside.  
January 19, February 16, March 29 and April 12, 2008.

Adjudication No. 08-1645. Fine \$2,000.00 and R.A.M.P. Training mandated.

1. Sales to a visibly intoxicated person.  
May 22, 2008.
2. Used loudspeakers or devices whereby music could be heard outside.  
May 16 and 17, 2008.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

As Licensee has failed to appear or obey process, I impose a \$1,000.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 12th 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

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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. 09-2342  
OLIVIA AND CARTER, INC.