

Mailing Date: JUL 24 2009

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

PENNSYLVANIA STATE :  
POLICE, BUREAU OF : Citation No. 08-2372  
LIQUOR CONTROL ENFORCEMENT :  
 : Incident No. W01-373851  
 :  
 v. :  
 : LID - 47179  
 :  
 1559 OTR INC :  
 1559 E HUNTING PARK AVE :  
 PHILADELPHIA PA 19124-4937 :  
 :  
 PHILADELPHIA COUNTY :  
 LICENSE NO. R-AP-SS-1987 :

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE: no appearance

**ADJUDICATION**

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on October 14, 2008. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on July 3, 2008, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

At the hearing scheduled for May 12, 2009, in Plymouth Meeting, Pennsylvania, there was no appearance for the Licensee; therefore, the case was heard *ex parte*.

FINDINGS OF FACT:

1. The Bureau investigated Licensee during the period May 3 through September 3, 2008, and sent written notice of the results of its investigation to the licensed premises by certified mail on September 16, 2009 (N.T. 10, Exhibit B-1).
2. A copy of this citation was mailed to Licensee on October 14, 2008 (N.T. 11, Exhibit B-2).
3. A Notice of Hearing was mailed to Licensee by the Office of Administrative Law Judge, Harrisburg, PA, by certified and first class mail on March 25, 2009.

4. On July 3, 2008, a liquor enforcement officer entered the licensed premises at about 10:15 p.m. There were seven patrons attended by one bartender. One of the patrons, a man who was drinking from a 12 ounce bottle of beer, staggered around the bar, talking to other patrons (N.T. 5-8).

5. This man came to the bar, about two feet away from the officer, who could see that the man's eyes were bloodshot. The man ordered another bottle of beer, which was served to him (N.T. 8)

6. This man then sat down at a table behind the officer and sang along to the music on the jukebox. He did not seem to know the lyrics he was singing, and slurred so that he could not be understood (N.T. 7-8).

7. After this the man approached the bartender and said that he was leaving. Another patron asked the man if he wanted a cab. The man said no. The bartender offered the man another bottle of beer and attempted to hand it to him. The man didn't respond to this, and just walked out the front door (N.T. 8-9).

#### CONCLUSIONS OF LAW:

Sustained as charged.

#### PRIOR RECORD:

Licensee has been licensed since May 14, 2001, and has had two prior violations:

Citation No. 02-1053. \$1,000.00 fine.

1. Sales to minors. March 13, 2002.
2. Minors frequenting. March 13, 2002.

Citation No. 05-1182. \$1,500.00 fine.

1. Sales to a minor. May 12, 2005.

#### PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, 1559 OTR, Inc., License No. R-AP-SS-1987, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

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. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; [www.lcb.state.pa.us](http://www.lcb.state.pa.us)) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (90) days of the mailing date of this adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

Failure to comply with this order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the Liquor Code, 47 P.S. Section 4-471(d).

Dated this 16<sup>TH</sup> day of JULY, 2009.



David L. Shenkle, J.

jb

**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.**

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