

Mailing Date: MAY 4 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2525
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-371858
v.	:	
	:	LID - 24444
HARKINS, INC.	:	
T/A MOUNTVILLE INN	:	
61 E. MAIN ST.	:	
MOUNTVILLE, PA 17554-1627	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-SS-18376	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

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

For Licensee  
Stephen W. Cody, Esquire  
53 North Duke Street  
Suite 420  
Lancaster, PA 17602-2859

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 23, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Harkins, Inc., t/a Mountville Inn (Licensee), License Number R-AP-SS-18376.

The citation<sup>1</sup> 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 20, 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.

An evidentiary hearing was conducted on April 1, 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 March 28, 2008 and completed it on September 16, 2008. (N.T. 13)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on October 14, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 11)

3. On July 19, 2008, a Bureau Enforcement Officer arrived at the premises in an undercover capacity at 11:52 p.m. The Officer's attention was drawn to a customer who was standing approximately 6 feet away. He was loud and displayed extremely slurred speech. He swayed back and forth and from side to side, taking stutter steps to the side to maintain his balance. At one point, the targeted customer attempted to make a 180 degree turn. As he did so, he almost fell over. The customer walked around the bar area. He was unable to walk in a straight line. He stepped to the left or to the right in an apparent effort to maintain his balance. (N.T. 14-17)

4. On several occasions, it appeared to the Officer as if the bartender was looking at the customer and shaking his head as in disbelief. At 12:34 a.m., Sunday, July 20, 2008, the targeted customer made his way to the bar. He said something to the bartender which the Officer could not hear. The bartender retrieved a can of beer from the cooler. He opened the beer and placed it in front of the customer. After an exchange of money for the purchase, the patron picked up the beer and returned to some friends with whom he had been standing. The Officer departed at 12:55 a.m. (N.T. 17-19)

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1. Commonwealth Exhibit No. C-2, N.T. 11.

CONCLUSIONS OF LAW:

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

DISCUSSION:

The Bureau presents me with no more than twenty-one minutes of an Officer's observation. There is also an attempt to interpret the bartender's behavior as an acknowledgement or an agreement with the Officer's conclusion regarding the visibly intoxicated condition of the targeted patron. I am unwilling to draw that inference. It is not within my responsibility to engage in what virtually amounts to mind reading.

There can be no fixed set of criteria, each of which to be given equivalent weight, because each case must stand on its own peculiar facts. By way of example, if a patron's unsteady gait is so severe to the point of clear visibility to all within a licensed premises, that factor alone may very well be enough to tip the scales in favor of the Bureau.

The party carrying the burden of proof need not satisfy that burden with much evidence to spare. The sole requirement is that the burden be satisfied. In this matter and in consideration of my thinking in *Pleasant Valley Recreation Center, Inc.*, Adjudication No. 08-1520, I am satisfied the Bureau's assessment of the condition of the patron is supported by sufficient observation even if marginally so.

PRIOR RECORD:

Licensee has been licensed since December 28, 1989, and has had two prior violations:

Adjudication No. 92-0900. Fine \$1,500.00.

Sales between 2:00 A.M. and 7:00 A.M.

Adjudication No. 04-1732. Fine \$400.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time. September 4, 2004.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 A.M. September 4, 2004.

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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

I impose a \$1,250.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,250.00 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.

**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 is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: [www.lcb.state.pa.us](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto:LBEducation@state.pa.us)), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 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.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 24<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.**

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. 08-2525  
HARKINS, INC.