

Mailing Date: FEB 08 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2776
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-383022
v.	:	
	:	LID - 53873
D'S LUCKY BAR, INC.	:	
1257-1259 DERRY ST.	:	
HARRISBURG, PA 17104-1048	:	
	:	
	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. E-AM-SS-3488	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PATTERSON
LICENSEE: LOAN NGO, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 25, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against D'S LUCKY BAR, INC., License Number E-AM-SS-3488 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on October 12, 2008, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated female patron.

The investigation which gave rise to the citation began on October 12, 2008 and was completed on October 16, 2008; and notice of the violation was sent to Licensee by Certified Mail on November 13, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 30, 2009 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. On October 12, 2008 at 9:35 p.m., an officer of the Bureau visited the licensed premises in an undercover capacity (N.T. 12).
2. Upon entry the officer observed approximately 30 patrons situated throughout the premises (N.T. 12-13).
3. While the officer was standing at the bar waiting for service there was a female patron in front of her leaning on the bar hunched over (N.T. 13-14).
4. The bartender asked the officer if she could help her, and the officer pointed towards the woman in front of her who was hunched over the bar. The bartender just said again, "Can I help you?" (N.T. 13-14).
5. The woman in front of the officer turned around, and the officer observed that her eyes were closed to little slits and she used slurred speech as she said, "Like what's up sis?" The officer said, "Nothing." The woman then said, "Oh, oh I'm sorry. I thought you were my sister's friend." She then turned back to the bar and leaned over the bar again (N.T. 14).
6. The bartender again asked the officer if she could help her, and the officer ordered and paid for a beer. She then walked away from the lady who was still leaning on the bar counter.
7. The officer walked away from the bar and took a seat in the bar room. As she sat there she observed the woman who had been leaning on the bar turn around. At that point she had a 16 ounce can of Country Club beer. She opened the can and took a drink and started walking across the room. As she was walking across the room, she was going back and forth and swaying (N.T. 15).
8. When the aforementioned female patron got to the other side of the room a male patron came across the dance floor. He was wearing a belt that had a huge silver skull as the belt buckle. The aforementioned woman saw that and bent over a little further and was attempting to lick the skull. The male patron was embarrassed and was turning around trying to get away from her. The woman was staggering back and forth. She had her tongue out and was wiggling it like a snake (N.T. 15).
9. The woman staggered over to a row of chairs that were against the wall and laid her head on a barstool. She was standing at this time. From time to time she'd lift up her head and start mumbling and then she put her head back down on the barstool.

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The record in this case indicates that a female patron in the licensed premises exhibited clear signs of intoxication. This consisted of eyes closed to slits, slurred speech and staggering. Further, the record indicates that more probably than not she was served a 16 ounce can of Country Club beer. The officer observed her open the can and drink from it. While she did not see the actual service, her observations indicate that more probably than not the patron was served the can of beer.

Testimony presented by the Licensee indicates that the patron in question was a homeless person and may have been on medication. It does not matter whether the intoxication which she exhibited was a result of consuming alcohol or whether she was in this condition as a result of taking other substances. In any event, she clearly appeared to be intoxicated.

Based on the foregoing, I conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since October 22, 2004, and has had one prior violation:

Citation No. 08-2142C. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a minor. August 7, 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 \$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.

This office takes notice that Licensee became RAMP certified effective February 12, 2009.

Under the circumstances of this case, the penalty imposed shall be a four days suspension and Licensee must remain RAMP certified until **January 25, 2011**.

ORDER

IT IS HEREBY ORDERED that the eating place license (including all permits) of D'S LUCKY BAR, INCORPORATED, License No. E-AM-SS-3488 be suspended for a period of four days **BEGINNING** at 7:00 a.m. on Monday, April 5, 2010 and **ENDING** at 7:00 a.m. on Friday, April 9, 2010.

Licensee is directed on April 5, 2010 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on April 9, 2010 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 21ST day of January, 2010.



Daniel T. Flaherty, Jr., J.

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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.