

Mailing Date: JAN 26 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-2889
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-381618
v.	:	
	:	LID - 17618
MARJORIE K. GOODMAN	:	
T/A THE BIERHAUS	:	
10141 US HIGHWAY	:	
522 SOUTH	:	
LEWISTOWN, PA 17044	:	
	:	
MIFFLIN COUNTY	:	
LICENSE NO. R-AP-SS-15829	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Michael C. Nickles, Esquire
LICENSEE: Frank C. Sluzis, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 12, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Marjorie K. Goodman, t/a The Bierhaus (Licensee), License Number R-AP-SS-15829.

The citation charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on October 11, 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 December 16, 2009 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania.

1. Commonwealth Exhibit No. C-2, N.T. 6.

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 September 22, 2008 and completed it on November 19, 2008. (N.T. 8-9)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 26, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

3. On Saturday, October 11, 2008, a Bureau Enforcement Officer entered the premises in an undercover capacity at 12:45 a.m. There were approximately 60 patrons who were being served by two bartenders. The Officer took a seat at the bar. After a few minutes, the Officer's attention was drawn to a customer who was approximately four to five feet to the Officer's right. The targeted customer was loud. It appeared as if he was picking fights with other customers. (N.T. 11-12)

4. The targeted customer stumbled, having a difficult time in maintaining his balance as he stood by the bar. The targeted customer had placed his hands on patrons nearby as if he were trying to steady himself. He was holding a twelve ounce bottle of beer. He was yelling at other customers around him. His speech was slurred and somewhat unintelligible. After several minutes, the targeted customer walked in the direction of the Officer. He leaned over and mumbled. The Officer could not determine what the targeted customer was saying as his speech was broken and unintelligible. The Officer sensed a strong odor of alcohol. The targeted customer's face was within eighteen inches of the Officer. The Officer noticed the targeted customer's eyes were bloodshot, watery and glassy. The targeted customer staggered away from the Officer towards the dance floor. Within minutes, the targeted customer returned to the bar area. He was yelling and picking on people as he walked by. (N.T. 13-14)

5. The targeted customer was making general comments to other customers such as: "What are you looking at?" When he returned to his position at the bar, his bottle of beer was empty. He set it on the bar. He was having a difficult time negotiating his way up to the bar. While seated at the bar, the bartender served the targeted customer a twelve ounce bottle of beer. While he was negotiating his way from and to the bar, he was staggering. There were no steps that the targeted customer had to negotiate and there were no uneven portions of the floor that offered a challenge to the targeted customer. In the Officer's opinion, there was no reason why the targeted customer should be having a difficult time placing one foot in front of the other, other than the fact the targeted customer was visibly intoxicated. (N.T. 14-15)

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.

DISCUSSION:

I accord the Officer's testimony and assessment of the targeted customer's condition substantial weight. I recognize Licensee provided testimony that the bartender, the Officer claimed served the targeted customer, left the premises at 12:30 a.m. I can only assume the bartender's memory was inaccurate as to the actual time he left the premises.

PRIOR RECORD:

Licensee has been licensed since May 24, 1983, and has had nine prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 94-0800. Fine \$350.00.

Used loudspeakers or devices whereby music could be heard outside.
March 5 and 20, 1994.

Adjudication No. 95-0595. Fine \$1,300.00.

1. Used loudspeakers or devices whereby music could be heard outside.
January 21, 29 and February 4, 1995.
2. You, Marjorie K. Goodman, Licensee, consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.
February 4, 1995.

Adjudication No. 97-0716. Fine \$350.00 and 1 day suspension.

1. Sales between 2:00 A.M. and 7:00 A.M.
February 22, 1997.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
February 22, 1997.
3. Permitted patrons to possess and/or remove liquor or malt or brewed beverages after 2:30 A.M.
February 22, 1997.

Adjudication No. 97-0804. Fine \$350.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
March 22, 1997.
2. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 A.M.
March 22, 1997.

Adjudication No. 99-1296. Fine \$700.00 and 2 days suspension and thereafter until fine paid.

Used loudspeakers or devices whereby music could be heard outside.
July 4, 1999.

Adjudication No. 00-0211. Fine \$100.00 and 30 days suspension of Amusement Permit.

Used loudspeakers or devices whereby music could be heard outside.
January 29, 2000.

Adjudication No. 04-0693. Fine \$1,000.00.

Sales to a visibly intoxicated person.
September 17, 2003.

Adjudication No. 05-1144. Fine \$300.00 and 7 days suspension of Amusement Permit.

Used loudspeakers or devices whereby music could be heard outside.
March 18, 26 and 27, 2005.

Adjudication No. 07-1925. Fine \$1,500.00 and R.A.M.P. Training mandated.

Sales to a visibly intoxicated person.
July 7, 2007.

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.

The Officer visited the licensed premises on October 23, 24 and November 7, 2008 and there were no violations (N.T. 16). Consequently, I impose a \$1,500.00 fine.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year from the mailing date of this Adjudication.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,500.00 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 must remain in compliance for a period of one year from the mailing date of this Adjudication.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 12TH day of January, 2010.



Felix Thau, A.L.J.

pm

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

The fine must be paid by cashier's check, certified check or money order. **Personal and business checks, are not acceptable unless bank certified.** 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. 08-2889
MARJORIE K. GOODMAN