

Mailing Date: MAR 03 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-3036
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-384770
v.	:	
	:	LID - 40414
FALLON HOUSE, INC.	:	
131 E. WATER ST.	:	
LOCK HAVEN, PA 17745-1343	:	
	:	
	:	
	:	
CLINTON COUNTY	:	
LICENSE NO. H-AP-1742	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PATTERSON
LICENSEE: DOLORES MANTLE, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 30, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against FALLON HOUSE, INC., License Number H-AP-1742 (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 November 16, 2008, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two visibly intoxicated female patrons.

The investigation which gave rise to the citation began on November 14, 2008 and was completed on December 9, 2008; and notice of the violation was sent to Licensee by Certified Mail on December 16, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 16, 2009 in the, 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 November 16, 2008 at approximately 12:25 a.m. an officer of the Bureau entered the licensed premises (N.T. 9).

2. Upon entry into the lobby of the licensed premises, the officer observed two female patrons coming from the hallway which leads back to the barroom area. These two individuals were holding onto each other, one appeared to be holding the other one up. The one that was being held up had a kind of blank stare and glassy eyes that appeared to be bloodshot. She was staggering, and the other female appeared to be helping her walk through and out of the door (N.T. 9). The officer walked into the barroom area and went to the bar to obtain service. Behind the bar was a male and female bartender. The male bartender was heard to be called Kev or Kevin (N.T. 10).

3. The officer took notice of a female patron standing in front of a TV. This individual was swaying back and forth. She was unsteady on her feet, and she was flailing her arms and hands around and up in the air. This action was not to music being played or to any kind of beat, but was rather uncoordinated. The aforementioned female patron was flailing her arms. She was loud and yelling and was very boisterous. She could be heard over the DJ who was in another room (N.T. 11).

4. The aforementioned female patron made her way to the bar, having trouble walking to it. She was staggering and putting her arms out. When she got to the bar she ordered a 12 ounce bottle of Bud Light beer. She ordered the beer from the male bartender, Kevin (N.T. 11).

5. While the aforementioned female patron was waiting for the beer, she was talking with another female patron; and by the time the bartender brought the beer back, the two females ordered two drinks called "Red Headed Sluts," which are made with Jagermeister liquor, peach schnapps and cranberry (N.T. 11-12).

6. While the aforementioned female patron was talking, her speech was slurred, and she was talking with a "fat tongue." She was hesitant trying to get her words out. At one point she kissed a male patron. The kiss lasted for 10-15 seconds. The male patron then walked away (N.T. 12).

7. As other female patrons came by, they seemed to know the female patron in question. She would grab hold of female patrons and male patrons and pull them to her and start kissing them. Most of them took some exception to it, and one in particular tried to get away. She reached around behind this female individual, pulled her back arching the patron backwards and was kissing her on the cheek (N.T. 12).

8. When the aforementioned female patron purchased the red headed sluts, she had difficulty getting the money out of her wallet. She grabbed her money and a large number of receipts. She put the receipts down on the bar, and pulled \$2.00 out to pay for her drink. She then started attempting to straighten out the receipts into a pile to put back into her wallet. She struggled and couldn't seem to deal with the receipts. She kept moving her head back adjusting her line of sight with the receipts. At one point she just crumpled all the receipts up and threw them behind the bar onto the bartender's side (N.T. 12-13).

9. The female patron in question mulled around in an area with her group of friends. Another male patron came in, different from the first one that she had kissed, and the female patron and this second male patron started kissing (N.T. 13).

10. The aforementioned female patron continued to slur her speech. She eventually finished her first 12 ounce bottle of Bud Light and got the second male individual that she was kissing to purchase a drink for her. She told him she didn't have any money left and he would have to buy it for her. She called the bartender Kevin over and ordered the bottle. The bartender brought the drink over and put it directly in front of the female patron, and she took possession of it. The male patron paid for it (N.T. 13-14).

11. At around 1:30 a.m., the officer noted the first female patron that he had seen in the lobby that was being helped by the other female to walk through the lobby. She was standing at the bar, holding on to the bar (N.T. 14). At this point Mr. Mantle, Vice President of Licensee corporation was standing in the same area as the officer and the female patron in question (N.T. 14).

12. The officer observed this female patron holding on to the edge of the bar with two hands. As she was holding on, he observed her drop about 12 inches. The bar kept her from falling flat on her back and falling down (N.T. 15).

13. The officer observed that the aforementioned female patron had an expression on her face that indicated she didn't seem to understand what had happened. Within a minute or so she dropped again and held onto the bar again to keep from falling. She was able to pull herself back up. Again she had an expression on her face that indicated she did not understand what was going on (N.T. 15).

14. The officer observed a bartender come over and pour six shots of liquid which appeared to be alcoholic beverages. These six drinks were paid for by a male patron standing near the female in question (N.T. 15-16). The male patron who paid for the shots spread them out among a group of individuals who were standing there, the female patron in question being one of them (N.T. 16).

15. The female patron picked up the shot, and when she did she spilled it on her hand. She then put it back down and tried to lick the drink off of her fingers. She had a quizzical expression on her face indicating she did not understand how she had spilled the drink. She stared at the drink for a minute. She then picked up the shot again and drank it (N.T. 16).

16. Almost immediately the aforementioned female patron grabbed her stomach and bent over in an action that would suggest she was about to regurgitate. Her eyes got wide, they were glassy and it took her about a minute to gain her composure. She reached for her purse and reached in it and pulled out a cell phone. She attempted to open the flip-style phone. It took her five or six attempts to open it over 30-40 seconds. She finally got it open, and as soon as she did she closed it and put it back into her purse (N.T. 16-17).

17. Of the six shots that were initially poured by the bartender, five were drunk. The male patron apparently bought one extra or somebody he bought it for had walked away. He pushed the shot in front of the female patron in question. She picked up the shot and eventually drank it. After drinking the shot she walked away from the bar out to the dance floor. She was staggering. She disappeared on the dance floor. Later she came back and sat down in a chair at a table (N.T. 17).

CONCLUSION OF LAW:

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

DISCUSSION:

The record indicates that service of alcoholic beverages were made to two female individuals who exhibited clear signs of intoxication before being served alcoholic beverages. The charge in the citation is, therefore, sustained.

PRIOR RECORD:

Licensee has been licensed since July 8, 1997, and has had six prior violations:

Citation No. 01-2020. Fine \$1,000.00.

1. Sales to a minor.
2. Minor frequenting.

Citation No. 03-1678. Fine \$200.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m. July 27, 2003.

Citation No. 05-2185. Fine \$250.00.

1. Used loudspeakers or devices whereby the sound of music could be heard outside. June 16, September 10 and 15, 2005.

Citation No. 07-1864. Fine \$350.00 and 1 day suspension with thereafter conditions.

1. Not a bona fide restaurant in that food items were insufficient and/or you failed to provide food upon request. March 2, April 12 and June 21, 2007.

Citation No. 08-0649. 4 days suspension.

1. Sales during a time when the license was suspended. February 1, 2008.
2. Notices posted on the licensed premises indicated that your establishment was closed for a reason other than the suspension of the license. February 2, 2008.
3. Failed to post in a conspicuous place on the outside of the licensed premises a notice of suspension. February 1, 2, 4 and 6, 2008.

Citation No. 08-1317X. Fine \$150.00.

1. Issued worthless checks in payment for purchases of malt or brewed beverages. April 18, 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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,500.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee FALLON HOUSE, INC., 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.

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; Email Address: LBEducation@state.pa.us) within 30 days of the mailing date of this Adjudication. 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.

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. §4-471(d)].

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

Dated this 8TH day of February, 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.

Detach here and submit 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.** Make 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. 08-3036
Fallon House, Inc.