

Mailing Date: SEPT 24 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-3086
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-385051
	:	
v.	:	LID - 57494
	:	
JUNCTION, INC.	:	
T/A PADDY'S IRISH PUB AND	:	
EATERY	:	
385 N. MAIN ST.	:	
PITTSTON, PA 18640-2141	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-3971	:	

BEFORE: JUDGE THAU

BUREAU COUNSEL: Craig A. Strong, Esquire

LICENSEE: William R. Bartley – President/Secretary/Director/Stockholder

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 7, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Junction, Inc., t/a Paddy's Irish Pub and Eatery (Licensee), License Number R-AP-SS-3971.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on December 13, 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.

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

The second count charges Licensee with violations of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on December 13 and 14, 2008, Licensee, by servants, agents or employees, used, or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The third count charges Licensee with a violation of Section 493(28) of the Liquor Code [47 P.S. §4-493(28)]. The charge is that on December 13, 2008, William Bartley, Licensee's Corporate President, consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

An evidentiary hearing was conducted on July 31, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee was represented by its President/Secretary/Treasurer/Stockholder, Mr. William R. Bartley.

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 November 21, 2008 and completed it on December 17, 2008. (Commonwealth Exhibit No. C-1, N.T. 10)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on December 22, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 10)

Count No. 1:

3. A Bureau Enforcement Officer entered the premises in an undercover capacity on December 13, 2008. There was an individual seated immediately to the Officer's right. The customer was very loud. His voice was slurred. At one point, the customer stood up and fell against a wall. He sat back down on the barstool. While in this condition, the customer ordered a shot of liquor and a beer. The bartender took money from the customer's position at the bar and served the customer what he had ordered. The Officer was almost elbow to elbow with the customer at the bar. (N.T. 12-25)

Count No. 2:

4. During the Officer's visit of December 13, 2008, at 11:25 p.m., he noticed an entertainer playing an acoustic guitar. There was a microphone which was connected to an amplifier. The Officer departed the premises and heard the music as far away as 200 feet. The Officer returned to the premises at 11:30 p.m. The entertainer took a break. The jukebox was then turned on. (N.T. 35-36)

5. The Officer departed the premises at 12:15 a.m., December 14, 2008. He heard music emanating from the jukebox as far away as 120 feet. (N.T. 37-38)

Count No. 3:

6. At 11:45 p.m., Licensee's President, Mr. B. was seated at a table. Mr. B. went behind the bar, poured a pitcher of beer and a shot of liquor. He poured a beer for himself. He drank some. Mr. B. served the pitcher of beer to the table at which he previously had been sitting. (N.T. 37)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1, 2 and 3 are **sustained** as charged.

DISCUSSION:

A significant element in the Officer's opinion that the customer was visibly intoxicated was that he fell against the back wall down to the floor. The wall was approximately two feet behind the barstool. I find that observation to be highly persuasive in concluding the customer was visibly intoxicated when served.

PRIOR RECORD:

Licensee has been licensed since March 5, 2007, and has had two prior violations (Commonwealth Exhibit No. C-3, N.T. 47):

Adjudication No. 08-0340. Fine \$650.00.

1. Used loudspeakers or devices whereby music could be heard outside.
January 26 and 27, 2008.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
January 27, 2008.
3. Permitted patrons to possess and/or remove alcoholic beverages after 2:30 A.M.
January 27, 2008.

Adjudication No. 08-2363. 3 days suspension.

Sales after your license expired and had not been renewed and/or validated.
September 2, 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 Count No. 1 and a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in Count Nos. 2 and 3 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:

- Count No. 1 – 4 days suspension.
- Count No. 2 - 2 days suspension.
- Count No. 3 – \$200.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$200.00 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.

Imposition of Suspension

IT IS FURTHER ORDERED that the Restaurant liquor license (including all permits) of Junction, Inc., t/a Paddy's Irish Pub and Eatery, License No. R-AP-SS-3971, be suspended for a period of 6 days, **BEGINNING** at 7:00 a.m., on Monday, November 16, 2009, and **ENDING** at 7:00 a.m., on Sunday, November 22, 2009.

Licensee is directed, on Monday, November 16, 2009, at 7:00 a.m., to place a 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 Sunday, November 22, 2009, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

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; Email Address: 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 4TH day of September, 2009.


Felix Thau, A.L.J.

pm

Detach Here and Return Stub with Payment

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, Pennsylvania 17110-9661

Citation No. 08-3086
JUNCTION, INC.