

Mailing Date: JUL 15 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0047
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-378211
	:	
RANDY E JACKSON	:	
T/A TERRY'S LOUNGE	:	LID-52357
110 W WYLIE AVE	:	
CANTON TWP	:	
WASHINGTON PA 15301-2206	:	
	:	
WASHINGTON COUNTY	:	
LICENSE NO. R-AP-6343	:	

BEFORE: JUDGE ROBERT F. SKWARYK

APPEARANCES:

For Bureau of Enforcement: Michael C. Nickles, Esq.
For Licensee: Sherry Jackson, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 20, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Randy E. Jackson, T/A Terry's Lounge, License Number R-AP-6343 (hereinafter Licensee).

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

The investigation which gave rise to the citation began on July 23, 2008 and was completed on December 22, 2008. The notice of violation letter was mailed to Licensee on January 5, 2009.

An evidentiary hearing was held on this matter on June 2, 2009, in Pittsburgh, Pennsylvania.

RANDY E. JACKSON
T/A TERRY'S LOUNGE
Citation No. 09-0047

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Washington County, Pennsylvania and holds Restaurant Liquor License Number R-AP-6343. (N.T. 4).
2. On Tuesday, August 5, 2008, at approximately 8:05 p.m., an enforcement officer entered the licensed premises and found a barmaid rendering service to approximately 25 patrons. (N.T. 9-10)
3. The officer observed a male patron in the establishment, drinking a 12-ounce bottle of Coors Light beer, attempting to talk, and displaying visible signs of intoxication. (N.T. 10-11)
4. The patron would stagger from the bar, mumble, yell incoherently, and make slapping motions in the air. (N.T. 10-12)
5. The patron was unable to light a cigarette, use a cigarette lighter, or operate a cigarette machine and the barmaid had to assist him. (N.T. 10-13)
6. At 8:20 p.m., the barmaid served the patron a 12-ounce bottle of Coors Light beer. (N.T. 11)
7. At 9:10 p.m., the barmaid refused to serve the patron a shot. (N.T. 14)
8. At 9:50 p.m., the barmaid served the visibly intoxicated patron another 12-ounce bottle of Coors Light beer. (N.T. 15)
9. At 10:00 p.m., the officer departed the premises. (N.T. 16)
10. During the course of the investigation, enforcement officers reviewed Licensee's file on July 24th and made undercover visits to the premises on August 5, 23, September 20, October 4, 24 November 14, December 6 and 20, 2008. (N.T. 16-17)

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officer testified in detail as to his visit to the licensed premises on August 5, 2008. Licensee's wife appeared at the hearing with a power of attorney because Licensee was too ill to appear himself. Title 31, Pa. Code Sections 31.21, 31.22 and 31.23 set forth the regulations governing the appearance by a Licensee before an administrative agency. Rather

RANDY E. JACKSON
T/A TERRY'S LOUNGE
Citation No. 09-0047

than accept her waiver at the hearing, I heard the officer's testimony and his wife was permitted to ask him questions. She chose not to testify and was not present during the officer's visit on August 5, 2008.

I find the testimony of the officer to be credible. As such, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since January 9, 2004, and has four (4) prior violations, to wit:

No. 05-2093. Fine \$250.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
August 25, 2005.

Citation No. 06-0479. Fine \$1,300.00.

1. Sales to a minor.
January 26, 2006.

Citation No. 06-1004. Fine \$250.00

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (tip boards).
March 9, 2006.

Citation No. 07-2421. 5 days suspension.

1. Sales on Sunday after 2:00 a.m.
June 29, 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.¹

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed for count one of the citation include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudication No's., in combination with this citation, require that license revocation or suspension be included as part of the penalty: 06-0479, 06-1004 and 07-2421.

Counsel for the Bureau has recommended an eight day suspension as the penalty in this case.

¹[47 P.S. §4-471(d)], effective June 12, 2006.

RANDY E. JACKSON
T/A TERRY'S LOUNGE
Citation No. 09-0047

Notwithstanding the recommendation of the Bureau, a six day suspension and mandatory R.A.M.P. training shall be imposed as the penalty in this case.

ORDER:

Licensee is directed on Monday, August 17, 2009, 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 Sunday, August 23, 2009, at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

IT IS ALSO ORDERED that Licensee, Randy E. Jackson, T/A Terry's Lounge shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcoholic Management in the following manner. Licensee is directed to initiate contact with the Bureau of Alcohol Education (Telephone 1-866-275-8237; Web Site: *www.lcb.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, and for that purpose jurisdiction is retained. Failure to comply may also constitute ground for issuance of a new citation as authorized by 47 P.S. §4-471(e).

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 8TH day of JULY, 2009.



Robert F. Skwaryk, J.

RANDY E. JACKSON
T/A TERRY'S LOUNGE
Citation No. 09-0047

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.