

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. 09-0099
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-382388
v.	:	
	:	LID - 59181
MYPTIA, INC.	:	
T/A OLYMPIC COCKTAIL LOUNGE	:	
& RESTAURANT	:	
1430-34 DERRY STREET	:	
HARRISBURG, PA 17104-3328	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. R-AP-SS-9583	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PATTERSON
LICENSEE: STEVE C. NICHOLAS, ESQUIRE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 29, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MYPTIA, INC., License Number R-AP-SS-9583 (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 December 11, 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 male patron.

The investigation which gave rise to the citation began on October 3, 2008 and was completed on January 6, 2009; and notice of the violation was sent to Licensee by Certified Mail on January 15, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on June 30, 2008 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 December 11, 2008 at 8:05 p.m., an officer of the Bureau entered the licensed premises in an undercover capacity (N.T. 8).
2. The officer observed two counter attendants rendering service to 15 patrons (N.T. 8).
3. In the very front of the service area, the officer observed a male patron who was swaying. He was speaking in an excessively loud voice, and his speech was slurred. The officer was able to get close enough to him to see that his eyes were bloodshot (N.T. 9-10).
4. The officer observed that the aforementioned patron was drinking from a 16-ounce bottle of Budweiser beer. He was also drinking an unidentified liquid from a small Styrofoam cup (N.T. 10-11).
5. The officer noted that while the patron swayed from side to side, he struggled to match his bottle of beer to his mouth. He was very loud in conversation with the counter attendant and he even staggered as he drank. He stumbled and swayed several steps forward and back. Several times he would lean against a pole in the area. He leaned against the poles and then started sliding and would have to catch his balance (N.T. 11-12).
6. The aforementioned patron engaged in conversation with new patrons that came into the premises. He told these patrons, "I'm messed up. I'm messed up and drunk." (N.T. 12).
7. At 8:25 p.m., the patron was still in conversation with a counter attendant. He held up his beer and said, "I'll have another." The counter person, Mr. Strunk, advised a female clerk to get the patron another beer. The officer saw another 16-ounce bottle of beer served to the patron, and she observed the patron consuming from this bottle of beer (N.T. 13).

CONCLUSION OF LAW:

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

DISCUSSION:

The record establishes that a patron who exhibited clear signs of intoxication, i.e. staggering, slurred speech, bloodshot eyes, was served a bottle of beer. It is, therefore, clear, that the Bureau of Enforcement has met its burden and the charge in the citation is therefore sustained.

PRIOR RECORD:

Licensee has been licensed since November 28, 2007, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 June 17, 2009.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and Licensee must remain RAMP compliant until **January 18, 2011**.

ORDER

THEREFORE, it is hereby ordered that Licensee MYPTIA, INC., pay a fine of \$1,250.00 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 must remain in compliance until **January 18, 2011**.

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

Dated this 22ND 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.

Detach here and submit stub with payment

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make 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

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Myptia, Inc.