

Mailing Date: JUL 29 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0170
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-383121
v.	:	
	:	LID - 49518
STANLEY STEIN INC	:	
2332 ORTHODOX ST	:	
PHILADELPHIA PA 19137-1127	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-OPS-571	:	

JUDGE SHENKLE
BLCE COUNSEL: Erik S. Shmukler, Esq.
LICENSEE COUNSEL: Paul L. Herron, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on February 3, 2009. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 7, 2009, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

A hearing was held on June 4, 2009, in Plymouth Meeting , Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On January 7, 2009, two liquor enforcement officers entered the licensed premises at 8:15 p.m. There were three other patrons and one bartender. At 8:40 p.m. a man came into the premises whose wife had died suddenly about two weeks earlier. The man sat next to one of the officers, about two feet from him, and began to talk. He introduced himself. He ordered a bottle of beer. He asked the officer's name. His eyes were bloodshot. The officer had difficulty understanding him. He smelled of alcohol (N.T. 7-8, 19, 24).

2. The man went to a jukebox and tried to deposit dollar bills into it, but was not able to get the money in the proper position for the dollar bill acceptor to take it. The man said he wanted to hear some rock and roll. He asked one of the officers to help him put the money in the jukebox, handing the bills to her. The officer deposited the money and asked what the man wanted to hear. The man told her to pick whatever she likes (N.T. 8-9).

3. The man sat back down and resumed talking. At about 8:55 p.m. he ordered a shot and a beer. The bartender served these drinks. The man played "air guitar." He bought a round of drinks for the bar. He introduced himself to the officer a second time (N.T. 9-10).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on January 7, 2009, by selling alcoholic beverages to one visibly intoxicated male patron.

DISCUSSION:

The man described in the testimony was known to the bartender and the other patrons, although he was not a frequent patron at the premises. The bartender attributed the man's red eyes to his grief at the loss of his wife.

This may have been a correct explanation, but there were too many other indications that the man was also intoxicated. A licensed restaurant is no place for friends to allow a bereaved friend to tie one on.

The bereaved man exhibited other odd behavior, but after it occurred the bartender cut him off. One of the patrons drove him home.

PRIOR RECORD:

Licensee has been licensed since June 26, 2002, and has had prior violations as follows:

Citation No. 03-1457. \$1,250.00 fine.

1. Sales to a minor. June 19, 2003.
2. Operated without a valid health permit or license. July 2, 19 and 29, 2003.

Citation No. 04-0944. \$500.00 fine.

1. Not a *bona fide* restaurant (insufficient food). November 7, 2003.
2. Operated without a valid health permit or license.
November 7, 2003, and January 23, 2004.

Citation No. 05-1348. \$200.00 fine.

1. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises. June 3, 2005.

Citation No. 07-1727. \$150.00 fine.

1. Failed to keep records on the licensed premises. June 16, 2007.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Stanley Stein, Inc., License No. R-AP-SS-OPS-571, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

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. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; www.lcb.state.pa.us) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (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. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

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. Section 4-471(d).

Dated this 23RD day of JULY, 2009.



David L. Shenkle, J.

jb

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 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 PA 17110-9661