

Mailing Date: JAN 07 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0308
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-387095
v.	:	
	:	LID - 60491
ALP HOLDING CORP. OF PA	:	
T/A AJAY'S CAFE	:	
2901-05 MAPLE AVE.	:	
ALTOONA, PA 16601	:	
	:	
	:	
BLAIR COUNTY	:	
LICENSE NO. R-AP-SS-14532	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** Emily L. Gustave, Esquire  
**LICENSEE:** Louis Grillo – Vice President/Secretary/Treasurer/Manager/Steward and Stockholder

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on February 20, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against ALP Holding Corp. of PA, t/a Ajay's Cafe (Licensee), License Number R-AP-SS-14532.

The citation<sup>1</sup> 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 6, 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. 12

An evidentiary hearing was conducted on November 19, 2009 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. Licensee was represented by its Vice President, Secretary/Treasurer/Manager/Steward and Stockholder, Mr. L.G. I advised Mr. L.G. of Licensee's right to counsel, to cross-examine witnesses and to present testimony. Mr. L.G., acknowledged that he understood those rights and that he was prepared to go forward without an attorney. (N.T. 8)

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 December 6, 2008 and completed it on January 28, 2009. (N.T. 13)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on February 6, 2009. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 12)

3. On December 6, 2008, a Bureau Enforcement Officer visited the licensed premises in an undercover capacity. He arrived at 12:55 a.m. (N.T. 14)

4. Upon entry, the Officer's attention was drawn to a man whose behavior alerted the Officer to observe the customer. The Officer took a seat at the bar very close to where the targeted customer was standing. The targeted customer staggered. He had a hard time maintaining his balance. His eyes were bloodshot. The targeted customer seemed very much "out of sorts." The targeted customer stepped up to the service bar right beside the Officer. The targeted customer attempted to place an empty glass on the bar. The targeted customer missed the bar twice. On the third attempt, the targeted customer succeeded in placing the glass on the bar. The Officer attempted to engage the targeted customer in conversation. The targeted customer's speech was broken and unintelligible; he was mumbling. The Officer could not understand anything the targeted customer was saying. At 1:10 a.m., the bartender took the targeted customer's empty glass from the bar, poured a draft beer into the glass and set the full glass in front of the targeted customer. The targeted customer proceeded to drink the beer. The Officer departed the premises at 2:00 a.m., with eight patrons remaining. (N.T. 14-17)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The citation is **sustained** as charged.

DISCUSSION:

I find the Officer's testimony to be supported by sufficient observations and detail. I further find Licensee's Vice President/Secretary/Treasurer/Manager/Steward and Stockholder, Mr. L.G. and Licensee's barmaid to be credible. I do believe both simply missed the targeted customer.

PRIOR RECORD:

Licensee has been licensed since November 13, 2008, and has had no prior violations.

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.

However, if at the time of violation, the licensee was in compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to Responsible Alcohol Management and the licensee had not sold to minors in the previous four years, Liquor Code Section 471(b) [47 P.S. §4-471(b)] provides for a fine structure of \$50.00 to \$1,000.00.

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.

As Licensee passed an Age Compliance Check on January 28, 2009 (N.T. 18) and is further subject to the lower penalty perimeters, I impose a \$400.00 fine.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year from the mailing date of this Adjudication.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$400.00 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.

**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 must remain in compliance for a period of one year from the mailing date of this Adjudication.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 18<sup>TH</sup> day of December, 2009.

  
Felix Thau, A.L.J.

pm

**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 cashier's check, certified check or money order. **Personal and business checks, are not acceptable unless bank certified.** 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