

Mailing Date: JAN 15 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0749
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-386792
	:	
2222 WALNUT STREET INC.	:	
2222 WALNUT ST.	:	LID - 55093
2220 WALNUT ST. REAR	:	
PHILADELPHIA PA 19103-5521	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-7978	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

**ELLIS WALDING
PRO SE**

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 7, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 2222 Walnut Street, Inc., License Number R-AP-SS-EHF-7978 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 7, 2009, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code Section 13.102(a)(3), in that on February 7 and March 7, 2009, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited domestic draft beers and bottom shelf liquor were served for the set price of \$11.00.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises which was assigned on January 5, 2009. The officer's first visit to the premises was January 24, 2009. The officer observed no violations (N.T. 9).

2. The officer returned to the licensed premises on February 7, 2009 at approximately 10:20 p.m. The officer was accompanied by another Bureau officer (N.T. 9-10).

3. The officers were approached by a male who requested identification from them. The officers provided the identification and the man stamped their right hand with a star symbol in black ink. They were also required to pay an eleven dollar cover charge for an open bar. The officers made inquiry as to what was included in the eleven dollar charge. They were told that there was an open bar from 10:00 p.m. to 12:00 a.m. (N.T. 10-11).

4. The officers entered the premises at approximately 10:30 p.m. They saw numerous patrons drinking and sitting in the bar area. The officer recalled approximately two bartenders. At 10:35 p.m., the officers approached the bar and ordered a mixed alcoholic drink, which he believed to be vodka and cranberry juice, from a female bartender (N.T. 11-12).

5. The bartender made the drink and sold it to them and at no time did she request any money for the transaction. The officers saw numerous patrons sitting at the bar. On top of the bar there were pennies, but she did not take pennies from any of the pile of pennies. The pennies were set up at numerous locations but she did not take any money from those locations (N.T. 12).

6. At 10:50 p.m., the officers ordered another drink and again no money was exchanged (N.T. 13).

7. At approximately 11:20 p.m., the officers again approached the bar and ordered a vodka and cranberry. No money was exchanged for the drink. No pennies were taken from the pile of pennies located at the bar (N.T. 13).

8. There was never any mention of why the pennies were on the bar (N.T. 14).

9. The officers found no patrons paying any money to the bartenders (N.T. 14).
10. Prior to coming to the establishment, the officers found an advertisement for penny drinks from 10 to 12 on Saturday nights (N.T. 15).
11. The officers departed the premises at approximately 11:50 p.m. The officer returned to the premises on March 7, 2009 at approximately 10:30 p.m. At this time, the officer was accompanied by another Bureau officer. The officers were requested to show identification. Again, a star symbol was stamped on their right hands in black ink. The officers were requested to pay an eleven dollar cover charge (N.T. 15-16).
12. The officers paid the cover charge and entered the establishment. After this, they approached the bar and requested vodka and cranberry, a mixed alcoholic beverage. There were numerous patrons being served at the bar. There were two bartenders working at this time. The officer ordered the first drink at approximately 10:40 p.m. and no money was exchanged (N.T. 16-17).
13. The officer saw pennies at various locations on the bar; no pennies were taken from the piles (N.T. 17).
14. At approximately 11:00 p.m., the officer ordered another vodka and cranberry mixed drink. No money was exchanged for these drinks. The officers approached the bar together and one ordered drinks for both of them (N.T. 18).
15. At approximately 11:20 p.m., the officers repeated the process of purchasing alcoholic beverages from the bartender. No money was exchanged for the drinks (N.T. 18-19).
16. The officer did not see the bartenders taking any pennies off the bar, as they were serving drinks (N.T. 19).
17. The officer indicated that at least on the second visit, he saw a buffet set up in the back of the establishment. He has no recollection of seeing the buffet on the first visit to the premises (N.T. 19-20).
18. The officers departed the premises at 11:50 p.m. (N.T. 20).
19. An officer from the Bureau of Enforcement testified that he accompanied a Bureau officer to the licensed premises on March 7, 2009. The officer had a conversation with the door person. When the doorperson asked for the eleven dollar cover charge, the officer asked if he could get in without paying. He was told that he could not. The doorperson indicated that the eleven dollar cover charge was for the *open bar* (N.T. 30-32).

20. Michael Murphy works at the licensed premises and has been employed for approximately twelve years. Within that time, he has worked every Saturday night. He testified that the licensed establishment got in trouble for the use of an ad for an open bar, therefore, use of that term is restricted (N.T. 34-35).

21. Mr. Murphy stated that the policy of the licensed premises is that customers are permitted to purchase alcohol by the drink as opposed to paying the flat rate. Additionally, Mr. Murphy indicated that the policy is on from 10 to 12. The bartenders are required to take monies from the bar, and then they serve the customer a drink (N.T. 35-36).

22. Mr. Murphy indicated that the bartenders receive tips and that money is left on the bar and not given to them directly in their hand (N.T. 36-37).

23. Mr. Murphy indicated the customers sometimes purchase a drink and leave the money on the bar and continue to purchase drinks from that pile of money (N.T. 36-37).

24. Licensees promotion is Saturday night one cent drinks in a glass from 10:00 p.m. till 12:00 a.m. There is a disc jockey and food (N.T. 38 and Exhibit L-1).

25. Mr. Murphy indicates that his buffet is always there on Saturday nights (N.T. 39-40).

26. Mr. Murphy indicates that he is the bartender and manager at the licensed premises (N.T. 41).

27. Ellis Walding is the sole corporate officer of the licensed premises. He has been in business since 1995. He alleges that at R.A.M.P. training he was told that Licensees were permitted to have money on the bar and have the bartender take the money off the bar each time for the purchase of a drink (N.T. 42-43).

28. Patrons are now required to pick up the money from the bar and hand it to the bartender (N.T. 45-46).

CONCLUSIONS OF LAW:

On February 7 and March 7, 2009, Licensee, by its servants, agents or employes, sold and/or served an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that unlimited domestic draft beers and bottom shelf liquor were served for the set price of \$11.00, in violation of Section 13.102(a)(3) of the Liquor Control Board Regulations, 40 Pa. Code Section 13.102(a)(3).

PRIOR RECORD:

Licensee has been licensed since November 3 2005, and has a record of prior violations as follows:

Citation No. 08-1813. \$300.00 fine.

1. Sold and/or served an unlimited or indefinite amount of alcoholic beverages.
July 12, 2008.

DISCUSSION:

Licensee is charged with serving an unlimited or indefinite amount of alcoholic beverages for a fixed price, in that draft beer and bottom shelf liquor was sold for the set price of eleven dollars on February 7, 2009 and March 7, 2009. Prior to offering anymore promotions at the licensed premises, it is highly suggested that the Licensee request an Advisory Opinion from the Liquor Control Board giving them the specific details of the promotion and finding out in advance if there will be an objection to that promotion.

Section 13.102(3) states that the sale or serving or both of an unlimited or indefinite amount of liquor, wine or malt or brewed beverages for a set price is unlawful. If there is a loophole in the law, the Court will honor the Licensee's right to take advantage of that unanticipated exception to the rule.

Here, the officers testified credibly that he was told he would not be permitted in unless he paid the eleven dollar cover charge which included "all you can drink." It does not matter whether the individual used the term "open bar," it is the practice and procedure which is at issue. The officers stated that no money was being taken for the drinks. If no money were taken for the drinks then the price of the drinks were covered by the eleven dollar charge and Licensee is in violation of this provision. If Licensee is going to utilize the loophole, they must do it in the strictest fashion. The Court will not allow them any wiggle room because of the potentially serious nature of this offense, which is the over consumption of alcoholic beverages by the patrons.

The Licensee did present as honest and straightforward and intent upon operating within the boundaries of the law. Under the circumstances, a \$350.00 penalty shall be imposed. It would behoove Licensee to contact the Liquor Control Board for an Advisory Opinion before embarking upon this or any other promotions that permit unlimited or indefinite amount of alcoholic beverages.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of a fine of not less than \$50.00 or more than \$1,000.00, or both, for violations of the type found in this case.

Accordingly, we issue the following

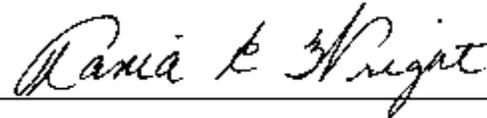
2222 Walnut Street, Inc.
Citation No. 09-0749

ORDER:

THEREFORE, it is hereby Ordered that Licensee, 2222 Walnut Street, Inc., License Number R-AP-SS-EHF-7978, pay a fine of Three Hundred Fifty Dollars (\$350.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing date of this Order, licensee's license shall be suspended or revoked.

In order to insure compliance with this Order, jurisdiction of this matter is retained.

Dated this 31ST day of December, 2009.



Tania E. Wright, J.

NOTE: 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.

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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, along with any required documentation, to:

PLCB - Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661

Citation No. 09-0749
2222 Walnut Street, Inc.