

Mailing Date: MAY 13 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1019
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-392505
	:	
SOUTH STREET EATERY INC.	:	
301 SOUTH ST.	:	LID - 36153
PHILADELPHIA PA 19147-1518	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. R-AP-SS-EHF-11265	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**EDWARD B. McHUGH, ESQ.**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 12, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against South Street Eatery, Inc., License Number R-AP-SS-EHF-11265 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, December 2, 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 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on April 3, 2009, Licensee, by its 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.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises on April 3, 2009 at 1:00 a.m. In conjunction with that investigation, he visited the licensed premises, accompanied by another Bureau officer. The officers entered the premises on the first floor and walked directly upstairs to use the restroom. One officer proceeded inside the restroom where he observed a white male, 5'9" tall and approximately 180 lbs., wearing a brown jacket and cargo pants. The man was standing at the urinal and was swaying back and forth struggling to stand up while using the urinal. The officer saw that the man had extremely bloodshot eyes. The officer saw that the restroom was full so he went back outside and stood behind other patrons who were waiting (N.T. 6-9).

2. After using the restroom, both officers returned to the first floor bar area. There were approximately fifteen patrons in that area. At that time, there was one bartender on duty. The officer noted a group towards the end of the bar and another group with the male who he had seen in the restroom at the bar (N.T. 9-11).

3. The individual periodically was standing and at other times sitting. He observed this individual in the company of a female and another male. The officer's attention was drawn to the male because he was extremely loud. In standing, he swayed trying to keep from falling. The officer observed him from a distance of approximately ten feet (N.T. 11-12).

4. The two people who were with him referred to him as "Danny." The officers continued to observe him for approximately ten to fifteen minutes. At 1:30 a.m., Danny fell off of his chair and the chair fell back towards the two officers (N.T. 12-13).

5. Danny fell forward a bit into the bar and then fell straight to the ground (N.T. 13-14).

6. While in the restroom, the officer had observed Danny in possession of a pint glass with an amber colored beverage in it. The officers believed that there was beer in the glass. When he was downstairs, he had the same beer in his hand. When Danny fell, the bartender was directly in front of him at a distance of about fifteen feet away (N.T. 13-15).

7. When the barstool fell, it made an extremely loud noise that could be heard over the music and the patrons' conversation. Once the patron fell, the female who was part of his group picked him up right away. Approximately ten minutes later at 1:40 a.m., Danny and his two friends were yelling and trying to get the attention of the bartender, Melissa. The three were yelling "one more for the road." They pounded on the bar and continued to yell. The bartender served Danny a shot of Jack Daniels. The officers heard the three ordering Red Bull and vodkas. The bartender made the drinks in front of them at the bar. The bartender prepared three Red Bull and vodka. The bartender opened the Red Bull and mixed it with the vodka. She gave each of the three in the group one of the drinks (N.T. 17-18).

8. The three started drinking the drinks immediately, however, Danny started and then stopped. Danny took a few sips of the drink and lowered his head. His head bounced off the bar and he stopped drinking the alcoholic beverage (N.T. 18-19).

9. Based upon his training, the officer determined that Danny was visibly intoxicated (N.T. 19).

10. The bartender was within fifteen feet from Danny and his companions (N.T. 21).

11. When Danny lowered his head, he stated that he did not know if he could drink anymore (N.T. 20-21).

12. While dancing, Danny struggled to stand and at times he was close to falling down (N.T. 22-23).

13. Danny approached one of the officers. The officer first asked Danny if he was okay and then asked him how much he had had to drink. The officer noted that his eyes were glassy and he had a strong odor of alcohol when he was approximately two feet from him (N.T. 22-23).

14. At approximately 1:53 a.m., Danny left and departed the premises to smoke a cigarette. The officers observed him through the window. Danny leaned against the light post outside. The officers observed him from a distance of about fifteen feet. Danny leaned with his right side against the pole and his eyes closed, walking and smoking a cigarette (N.T. 25).

15. The officers departed the premises at 1:55 a.m. and returned at 2:00 a.m.; Danny and his friends were still inside the premises (N.T. 25).

16. When the officers returned, Danny was sipping on the Red Bull and vodka and his female friend gave him Sparks, another alcoholic beverage/beer (N.T. 26).

17. Danny never became threatening or involved in an altercation (N.T. 61-62).

18. The second officer from the Bureau of Enforcement accompanied the investigating officer to the premises. He was sitting right next to the officer when Danny fell off the stool. When the patron fell off the stool, there was a loud thud. At this time, the bouncer was about ten feet to the right of the officer. There was an exchange of eye contact between the officer and the bouncer immediately following the patron's fall (N.T. 65-66).

19. The officer indicated that there were approximately three groups of people in the bar area - the group with Danny, the two officers and another set of patrons. People were coming and going during the course of the officer's visit (N.T. 74).

20. Melissa Bland is a bartender at the licensed premises and has been employed at that location for approximately two and a half years. She would normally have been working on the evening of April 3, 2009 but has no independent recollection of an individual named Danny being present at the location or of any activities out of the ordinary on that evening (N.T. 76-78).

21. The bartender was R.A.M.P. trained in 2008. She indicated that they have monthly meetings and employee meetings where they talk about visibly intoxicated patrons and underage drinking and other issues (N.T. 80-81).

22. Mr. Pearson is an officer, director and shareholder of the licensed premises and has been for approximately six years. He was not present at the bar on that evening. He indicated he did have a manager on duty and that Melissa Bland was the bartender. He generally has two security persons on duty (N.T. 84-85).

CONCLUSIONS OF LAW:

On April 3, 2009, Licensee, by its 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, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since January 24, 1996, and has a record of prior violations as follows:

Citation No. 04-1125. \$300.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.  
May 19, 28 and June 12, 2004.

Citation No. 06-1717. \$400.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.  
May 25, June 10 and 17, 2006.

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Citation No. 06-2506. \$800.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.  
September 7, 2006.
2. Furnished more than one free drink per patron.  
September 20, 2006.
3. Engaged in unlawful discrimination in that Licensee provided alcoholic beverages to female patrons at no cost while charging full price to male patrons.  
September 20, 2006.

Citation No. 07-0046. \$2,300.00 fine and R.A.M.P. training mandated.

1. Used loudspeakers or devices whereby music could be heard outside.  
October 18 and 19, 2006.
2. Sales to a visibly intoxicated person.  
October 18, 2006.
3. Sales after the license expired and had not been renewed and/or validated.  
November 16, 17, 30 and December 6, 2006.

Citation No. 07-2052C. \$2,000.00 fine.

1. Sales to minors.  
May 28 and July 12, 2007.
2. Minors frequenting.  
May 28 and July 12, 2007.

Citation No. 08-0357. \$2,800.00 fine.

1. Sales after the license expired and had not been renewed and/or validated.  
November 2, 21, December 5, 2007, January 7 and 10, 2008.
2. Used loudspeakers or devices whereby music could be heard outside.  
September 21 and October 21, 2007.

Citation No. 08-2007. \$200.00 fine.

1. Failed to comply with the Order of the Administrative Law Judge mandating R.A.M.P. training.  
June 23 through July 23, 2008.

DISCUSSION:

The Bureau officers testified credibly as to the events of April 3, 2009, which included seeing a patron named Danny who had many the indicia of being intoxicated. Danny had bloodshot eyes, he staggered and swayed and at one point he fell to the floor from an overturned barstool. Under the circumstances, the bartender should not have been continued to serve him.

A review of the prior history indicates that the Licensee has prior violations for sales to a visibly intoxicated person in 2006 and sales to a minor in 2007, which resulted in mandated R.A.M.P. training.

After a careful review of the facts and prior history, a mandatory suspension shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, 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. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that the Restaurant Liquor License of South Street Eatery, Inc., License Number R-AP-SS-EHF-11265, be suspended for a period of three (3) days **BEGINNING** at 7:00 a.m. on Monday, August 2, 2010 and **ENDING** at 7:00 a.m. on Thursday, August 5, 2010.

IT IS FURTHER ORDERED that Licensee shall remain in compliance with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management for a period of one year from the mailing date of this Order.

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).

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Licensee is directed on Monday, August 2, 2010 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.

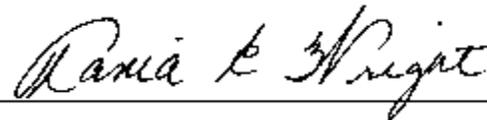
Licensee is advised if a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Thursday, August 5, 2010 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

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

Dated this 3<sup>RD</sup> day of MAY, 2010.



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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