

Mailing Date: MAR 03 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1293
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-390044
v.	:	
	:	LID - 51093
AVIS FIRE COMPANY CIVIC	:	
ASSOCIATION, INC.	:	
67 MARYLAND AVE.	:	
JERSEY SHORE, PA 17740-6969	:	
	:	
	:	
CLINTON COUNTY	:	
LICENSE NO. R-AP-SS-EHF-17090	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL PATTERSON  
LICENSEE: ELWOOD P. WELSHANS, PRO SE**

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on June 4, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against AVIS FIRE COMPANY CIVIC ASSOCIATION, INC., License Number R-AP-SS-EHF-17090 (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 February 28 and March 1, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to three visibly intoxicated male patrons.

The investigation which gave rise to the citation began on February 26, 2009 and was completed on May 10, 2009; and notice of the violation was sent to Licensee by Certified Mail on May 20, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 16, 2009 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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 February 28, 2009, two officers of the Bureau entered the licensed premises at 9:30 p.m.
2. At 10:45 p.m. the officers noticed a male patron, heard to be called Steve who left the bar area for the bathroom. He walked with an extremely staggered gait, almost tripping over two chairs. Upon returning from the bathroom Steve was talking with very heavily slurred speech, and he had red and glassy eyes (N.T. 10-11).
3. Among the people whom Steve was talking to were two individuals who were arguing loudly. They indicated they wanted to start a fight with one of the security staff for the premises. One of the individuals indicated that he knew he wasn't going to get cut off because he would leave \$100.00 tip for the bartender, and, she would, therefore keep serving him (N.T. 10-11).
4. One of the individuals described above was wearing an orange t-shirt, and the other had on a black t-shirt (N.T. 11-12).
5. The officers noted that the individuals wearing the orange t-shirt and black t-shirt also had very slurred speech and, like Steve, their eyes were glazed over and red (N.T. 12).
6. The officers observed the individual with the black t-shirt try to help Steve light a cigarette. Both of them were very unsteady to begin with. It took almost a minute to accomplish the task. The individual in the black t-shirt held the lighter, and Steve held the cigarette. They kept missing each other (N.T. 12-13).
7. After witnessing the aforementioned behavior, at approximately 11:20 p.m., the patron in the orange t-shirt ordered three shots, one for himself, one for Steve and one for the individual in the black t-shirt. These shots were "red death shots" consisting of vodka, southern comfort, triple sec, amaretto and orange juice. The three of them consumed the shots (N.T. 13).
8. About 7-10 minutes later this group of individuals ordered another round of red death shots. These shots were also served to the three individuals (N.T. 13-14).
9. Later on, the individual in the orange shirt ordered a Budweiser beer for Steve. After it was served to him, he slid it across the bar to Steve (N.T. 14).

10. At 12:00 midnight, the individual in the orange shirt knocked his beer over, and one of the bartenders told him he was cut off. About 15 minutes later, this same bartender served the individual in the orange t-shirt another Budweiser beer, this service taking place after midnight, now March 1, 2009 (N.T. 14-15).

11. During the time that the individuals were served the shots at 11:20 and at 11:30 and at some point thereafter when the patron in the orange shirt was served a Budweiser beer, Steve stood swaying at the bar. The other two continued to be loud and boisterous. Their speech continued to be slurred (N.T. 15).

12. At about 12:45 a.m., now March 1, 2009 the individual in the black t-shirt ordered two shots of Captain Morgan Rum. After being served the two drinks, he drank one, but the other one was left on the bar (N.T. 16-17).

CONCLUSION OF LAW:

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

DISCUSSION:

The record indicates that on the night in question, February 28 to March 1, 2009, personnel working for the Licensee served three individuals who clearly exhibited visible signs of intoxication, alcoholic beverages. The charge in the citation is, therefore, sustained.

PRIOR RECORD:

Licensee has been licensed since June 5, 2003, and has had one prior violation:

Citation No. 04-1586. Fine \$1,250.00.

1. Sales to a minor. April 4, 2004.

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 July 20, 2009.

Under the circumstances of this case, the penalty imposed shall be a fine in the amount of \$1,500.00 and licensee must remain RAMP compliant.

ORDER

THEREFORE, it is hereby ordered that Licensee AVIS FIRE COMPANY CIVIC ASSOCIATION, INC., pay a fine of \$1,500.00 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 **February 8, 2011**.

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

Dated this 8<sup>TH</sup> day of February, 2010.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

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**

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make 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

Citation No. 09-1293  
Avis Fire Company Civic  
Association, Inc.