

Mailing Date: JAN 11 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1373
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-390851
v.	:	
	:	LID - 32496
CLAYTON W. SHANK	:	
T/A J.R.'S SPORTS DEN	:	
512 OAKLAND AVE.	:	
LORAIN	:	
JOHNSTOWN, PA 15902-3228	:	
	:	
CAMBRIA COUNTY	:	
LICENSE NO. H-AP-SS-3158	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Nadia L. Vargo, Esquire
LICENSEE: Arthur T. McQuillan, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 10, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Clayton W. Shank, t/a J.R.'s Sports Den (Licensee), License Number H-AP-SS-3158.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on February 28, 2009, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to three (3) male minors, nineteen (19) years of age.

An evidentiary hearing was conducted on November 18, 2009 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania.

1. Commonwealth Exhibit No. C-2, N.T. 5.

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 March 15, 2009 and completed it on May 20, 2009. (N.T. 9)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on May 26, 2009. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)

3. A Municipal Police Officer was on duty and in uniform driving a marked police vehicle when he was dispatched to the licensed premises at 5:30 p.m., on February 28, 2009. (N.T. 21-24)

4. Upon arriving, the Municipal Police Officer was looking for a particular suspect. In doing so, he encountered several individuals that were under the influence of alcohol and appeared under age. The Municipal Police Officer saw two of the three individuals departing the licensed premises. (N.T. 25-29)

5. One was nineteen years old on the date in question (born June 12, 1989). He went to the licensed premises on February 28, 2009, arriving somewhere between 1:00 p.m. and 1:30 p.m. He was with a second minor. He ordered a few beers which he drank. He was not questioned as to age or asked for any identification. There was a door tender present but the premises was really busy. The nineteen year old was able to gain entry into the premises without being questioned. (N.T. 51-60)

6. A second minor was nineteen years old on the date in question (born August 9, 1989). He was with the first minor. He consumed about five or six beers which were purchased for him by an acquaintance. When he entered at about 1:00 p.m., there was no one tending the door. He departed the premises through a side door. (N.T. 84-93)

7. A third minor was nineteen years old on the date in question (born March 24, 1989). He entered the premises. He noticed some of his friends were sitting at a table. He asked another customer if the customer would get an alcoholic beverage for him. He drank the alcoholic beverage. While seated at the table with friends, he also drank from a pitcher of beer. (N.T. 103-107)

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:

It is no small wonder minors were able to infiltrate the licensed premises that day. By providing free food, as Licensee did, one could readily expect a large crowd that might overwhelm the staff to the point where monitoring the presence of minors would be impossible.

Licensee, himself was occupied with so many tasks, he could not have provided any attention to the overall operation. I have no doubt the door tender was doing all he could to verify the majority of all who entered. Given the rush of people, I am quite confident, the minors were able to dodge his watchful eyes.

There were two areas of credibility dispute between the minors' testimony and that for Licensee. One was whether the cups were clear plastic or not (N.T. 75). I find this dispute to be one of little dispositive value.

The second is more meaningful. The question was whether two minors departed the premises through a side door because Licensee claimed the door was locked. The testimony revealed the door was locked but from the inside and could easily be unlocked without a key (N.T. 69, 124). Thus, the minor's testimony that they left through a side door, as corroborated by the Municipal Police Officer, is true. Having found the Bureau's witnesses to be credible, I sustain the charge.

PRIOR RECORD:

Licensee has been licensed since June 21, 1993, and has had five prior violations:

Adjudication No. 96-2464. Fine \$200.00.
Not a bona fide hotel in that bedrooms for the accommodation of guests are insufficient in number and/or inadequately equipped.
October 22, 1996.

Adjudication No. 97-1262. Fine \$500.00.
Possessed or operated gambling devices or
paraphernalia or permitted gambling or lotteries,
poolselling and/or bookmaking on licensed premises.
March 14 and April 24, 1997.

Adjudication No. 97-2542. 1 day suspension.
Failed to maintain complete and truthful records
covering the operation of the licensed business
for a period of two years immediately preceding
November 13, 1997.

Adjudication No. 06-1740C. Fine \$1,250.00 and R.A.M.P.
Training mandated.
Sales to a minor.
June 24, 2006.

Adjudication No. 08-0954. Fine \$350.00.
Failed to keep records on the licensed premises.
April 1, 2008.

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.

I impose a \$1,750.00 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.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,750.00 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 is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us), within 30 days of the mailing date of this Adjudication for assistance in the compliance process. Licensee must receive Certification within 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 23RD 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