

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 May 30, 2009, an officer of the Bureau entered the licensed premises at 8:45 in the evening. There were approximately 40 patrons inside (N.T. 7).
2. As the officer was standing between the bar and the restroom, his attention was drawn to a male patron as he walked from the bar to the restroom. He stumbled his way across this area. About three feet away from the officer, the patron stopped on his way to the restroom to talk to another patron. The officer noted that the patron's eyes were red and glassy and he spoke to the other patron with very deliberate, slow speech (N.T. 7).
3. The officer observed the aforementioned patron as he returned from the restroom. The patron stumbled his way to the bar, almost falling down (N.T. 8).
4. At this point the officer heard someone refer to the patron as Eddie (N.T. 8).
5. When Eddie returned from the restroom, he went straight to the corner of the bar where he served himself a can of Miller Lite beer from a cooler and took a seat at the bar. The officer observed Eddie drink from the can of beer (N.T. 8-9).
6. A couple of minutes later, Eddie went to the other end of the bar and served another patron a can of Coors Light beer. He took the patron's money for it and handed it to the bartender. The bartender put it in the cash register and rang up the sale (N.T. 9-10).
7. The officer observed that the bartender was having problems trying to "unmute" the jukebox. Eddie stumbled his way to the jukebox in an attempt to help her fix it. He had difficulty pressing the screen but eventually he was able unmute the jukebox. He then attempted to play a song. He pulled money from his pocket and had difficulty trying to separate the bills to put them in the machine to play the song. Eventually he accomplished this task (N.T. 11).
8. Later, the officer saw Eddie in possession of a mixed drink (N.T. 11).
9. On June 12, 2009 the officer returned to the licensed premises at 8:55 p.m. (N.T. 12). The officer was accompanied by his supervisor (N.T. 12).
10. The officer's attention was drawn to a patron who was seated at the left corner of the bar in front of coolers. He had a draft beer in front of him and he was hunched over the bar when the officer first noticed him (N.T. 13).

11. The officer noted that this patron had red, glassy eyes which were watery (N.T. 13). The officer observed the patron when he pulled a cigarette out of a pack and was trying to light the cigarette. It took the patron several minutes. The patron had a great deal of trouble lighting the cigarette. He was having trouble connecting the flame to the end of the cigarette. He eventually lit the cigarette in the middle (N.T. 13).

12. The officer observed a female bartender serve this patron a Budweiser draft beer. The patron had difficulty paying for the beer. The bartender had to help him. There was a pile of money in front of the patron on the bar. The bartender helped him to get the correct money from the pile in front of him (N.T. 15).

13. The officer observed another female bartender serve the patron a second Budweiser draft beer. The patron again had difficulty in trying to pay the bartender for this second drink. The bartender had to attempt to coax the money out of the patron. The patron was having so much difficulty that a male patron seated next to him actually took the money and paid the bartender for him (N.T. 15-16).

14. The aforementioned patron consumed the entire first Budweiser draft served to him and consumed from the second drink that was served to him (N.T. 16).

CONCLUSION OF LAW:

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

DISCUSSION:

The record in this case clearly indicates that Licensee either furnished alcoholic beverages to the visibly intoxicated patrons or permitted visibly intoxicated patrons to be furnished alcoholic beverages. The appellate courts have held that the term permitted as used in Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] is defined as “acquiescing by failing to prevent.” *Bates v. Commonwealth of PA*, 397 A.2d 851 (Pa. Cmwlth 1979); *In re: revocation of restaurant liquor license*, 467 A.2d 85 (Pa. Cmwlth 1983); *Commonwealth of Pennsylvania, Liquor Control Board v. Abraham*, 541 A.2d 1161 (Pa. Cmwlth 1988).

The record reveals that in the incident that occurred on May 30, 2009, the officer observed a patron heard to be called Eddie in possession of two alcoholic beverages. It is clear, that the Licensee did not prevent Eddie from being served these beverages and therefore, is deemed to have permitted these beverages to be served to him.

With respect to the incident on June 12, 2009, the officer observed a patron who was exhibiting clear signs of intoxication being served two draft beers.

Based on the foregoing I conclude that the Bureau has met its burden by producing evidence which established the violations in this case. I therefore conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since December 30, 1999, and has had eight prior violations:

Citation No. 01-2153. Fine \$200.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m. July 5, 2001.

Citation No. 04-0962. Fine \$1,250.00.

1. Sales between 2:00 a.m. and 7:00 a.m. January 29 and May 8, 2004.

Citation No. 05-1224X. Fine \$150.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. April 19, 2005.

Citation No. 05-1306X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 13, 2005.

Citation Nos. 06-0385, 06-0433X & 06-0734, consolidated.
Fine \$450.00 and 2 Day Suspension.

1. Sunday sales after 2:00 a.m. January 22, 2006.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises. January 22, 2006.
3. Issued worthless checks in payment for malt or brewed beverages. December 8, 2005.
4. Failed to post in a conspicuous place on the outside of the licensed premises, a notice of suspension. February 21, 2006.

Citation No. 06-1667X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 16, 2006.

Citation No. 08-0306. Fine \$800.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time. December 23, 2007.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. December 23, 2007.
3. Discounted the price of alcoholic beverages for a period or periods in excess of 2 hours in a business day. January 13, 2008.

Citation No. 08-1036. Fine \$700.00.

1. Discounted the price of alcoholic beverages for a period or periods in excess of 2 hours in a business day. March 12, 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.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee T.J. SHOOTERS, INC., pay a fine of \$1,250.00 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 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. 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.

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. §4-471(d)].

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

Dated this 20TH day of October, 2010.



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

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. 09-1576
T.J. Shooters, Inc.