

Mailing Date: JAN 22 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1630
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-393967
	:	
v.	:	
	:	LID - 61286
	:	
KILDARES SCRANTON, INC.	:	
T/A KILDARES IRISH PUB	:	
119 JEFFERSON AVE.	:	
SCRANTON, PA 18503-1701	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-16304	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: William J. Shehwen, III, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 8, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Kildares Scranton, Inc., t/a Kildares Irish Pub (Licensee), License Number R-AP-SS-16304.

The citation¹ charges Licensee with a violation of Sections 406(a)(3) and §4-493(16) of the Liquor Code [47 P.S. §4-406(a)(3) and §4-493(16)]. The charge is that on June 7, 2009, Licensee, by servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 A.M. and 11:00 A.M.

An evidentiary hearing was conducted on December 10, 2009 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania. Licensee's Counsel was not present. Rather, he participated in the hearing via a telephone conference arrangement. Counsel for Licensee agreed to permit service electronically, via e-mail. (N.T. 21-22)

1. Commonwealth Exhibit No. C-2, 09-1630, N.T. 19.

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 May 7, 2009 and completed it on June 7, 2009. (N.T. 25)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on June 23, 2009. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, 09-1630, N.T. 19)
3. On June 7, 2009, a Bureau Enforcement Officer entered the premises in an undercover capacity at 10:05 a.m. and observed four patrons. The Officer ordered and was served a Bloody Mary at 10:25 a.m. (N.T. 26-27)
4. The Officer drank the mixed drink. The Officer felt the effects of the alcohol several minutes after she first consumed some of it. (N.T. 28-30)
5. After the General Manager discovered the offense, Licensee began operating at 11:00 a.m. rather than 10:00 a.m. Licensee was aware that even though Licensee could open for food at 10:00 a.m., no alcoholic beverages were to be served until 11:00 a.m. That rule did not trickle down to the staff. Since this incident, Licensee has notified staff of the lawful hours of selling alcoholic beverages. (N.T. 33-34)

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.

PRIOR RECORD:

Licensee has been licensed since March 10, 2009, and has had no prior violations.

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.

As this incident results from an error on the part of the staff, I impose the minimum fine of \$1,000.00.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 11TH day of January, 2010.



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