

Mailing Date: MAR 15 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-1639
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-389988
v.	:	
	:	LID - 52204
37 WEST HIGH ENTERPRISES, INC.	:	
37-41 W. HIGH ST.	:	
CARLISLE, PA 17013-2923	:	
	:	
	:	
	:	
CUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-16343	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PATTERSON
LICENSEE: BRAAM HATTINGH, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 9, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 37 WEST HIGH ENTERPRISES, INC., License Number R-AP-SS-16343 (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 April 4, 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 visibly intoxicated male patron.

The investigation which gave rise to the citation began on February 27, 2009 and was completed on June 3, 2009; and notice of the violation was sent to Licensee by Certified Mail on June 30, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 28, 2009 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 April 4, 2009, an officer of the Bureau entered the licensed premises at 12:00 midnight (N.T. 12 and 15).
2. Upon entry, the officer observed a bartender identified as Charles Washington tending bar and rendering service to 50 patrons (N.T. 12).
3. Shortly after entry, the officer's attention was drawn to a male patron who was stumbling and swaying as he walked toward the bar in an unbalanced manner. He was accompanied by a female patron (N.T. 12-13). When the aforementioned patron arrived at the bar counter, he began to sway again. He bounced into a patron on his right. That patron became aggravated and was heard to yell, "Get the fuck away from me."
4. A female patron who was speaking with the bartender was heard to say, "That's one way to get your jaw broken." (N.T. 13).
5. The male patron in question attempted to speak to his female companion. His speech was very loud and boisterous. He was speaking in a slurred and incoherent manner. The female patron who was with him just smiled and nodded as opposed to speaking to him. She did not appear to understand what he was saying (N.T. 13-14).
6. The male patron in question attempted to flag down the bartender, Mr. Washington. Mr. Washington approached and asked him what he wanted to drink. The patron was very loud and boisterous and used slurred speech. Mr. Washington had to ask him again what he wanted to drink. At that time another male patron who appeared to be an acquaintance of the patron in question came from the billiard room. He walked to the bar and asked the patron in question what he wanted to drink. He had to repeat that three or four times, and just turned to the bartender and said, "Get him Jameson." (N.T. 14).
7. The bartender, Mr. Washington acquired a bottle of Jameson Irish Whiskey and poured whiskey into a clear plastic cup with ice and topped it off with an unknown mixture. He then approached the patron in question and handed it to him. The other male patron said, "Put in on my credit card," and then walked back to the billiard room.
8. The aforementioned service occurred at 12:13 a.m. (N.T. 16).

CONCLUSION OF LAW:

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

DISCUSSION:

The record clearly establishes that a patron who exhibited very definite and discernable signs of intoxication was served an alcoholic beverage containing Irish whiskey. Consequently, I conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since December 12, 2003, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 was RAMP certified on November 16, 2009.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and Licensee must remain RAMP compliant.

ORDER

THEREFORE, it is hereby ordered that Licensee, 37 WEST HIGH ENTERPRISES, 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 must remain in compliance until **February 9, 2011**.

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

Dated this 25TH day of February, 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

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37 West High Enterprises, Inc.