

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. 09-1667
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W04-379925
	:	
W J BAUER INC	:	
T/A DISTRACTIONS	:	LID-55428
319 BROADWAY AVE	:	
MCKEES ROCKS PA 15136-3001	:	
	:	
	:	
ALLEGHENY COUNTY	:	
LICENSE NO. R-AP-SS-EHF-14568	:	

ADJUDICATION

JUDGE: ROBERT F. SKWARYK

APPEARANCES:

BUREAU COUNSEL: Emily L. Gustave, Esq.

LICENSEE COUNSEL: Ex Parte

BACKGROUND:

This proceeding arises out of a citation that was issued on July 15, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against W. J. Bauer, Inc., T/A Distractions, License Number R-AP-SS-EHF-14568 (hereinafter Licensee).

The citation contains three counts.

Count one of the citation charge Licensee with violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)], in that on December 14, 2008, Licensee by its servants, agents, or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

Count two of the citation charge Licensee with violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)], in that on December 14, 2008, Licensee by its servants, agents, or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for service of alcoholic beverages after 2:30 a.m.

W. J. BAUER, INC.
T/A DISTRACTIONS
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Count three of the citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471], in that on December 14, 2008, Licensee's sole corporate officer was visibly intoxicated on the licensed premises.

The investigation which gave rise to the citation began on August 20, 2008 and was completed on June 16, 2009. The notice of violation letter was mailed to Licensee on June 30, 2009, and received by Licensee on July 1, 2009.

An evidentiary hearing was held on this matter on December 9, 2009, in Pittsburgh, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

Counts One, Two & Three

1. Licensee is located in Allegheny County, Pennsylvania and holds Restaurant Liquor license number R-AP-SS-EHF-14568. (N.T. 4)
2. On Sunday, December 14, 2008, at 2:45 a.m., enforcement officers and local police officers arrived at the licensed premises, observed lights on and heard voices inside, gained entry and found Licensee's president and four individuals around the bar. (N.T. 7-10, 17)
3. Licensee's president had bloodshot eyes, an odor of alcohol emanating from his breath, slurred speech and difficulty walking. (N.T. 10-11, 17)
4. Licensee's president admitted to being intoxicated. (N.T. 11, 18)
5. One patron was in possession of a full cold draft beer. (N.T. 11, 17)
6. The officers observed no employment related activity in the establishment. (N.T. 11-12, 17)
7. At 3:15 a.m., the officers departed the premises. (N.T. 12, 17)
8. The Bureau's investigation was continuous and ongoing throughout the investigative period. (N.T. 13-15, 19-20)

CONCLUSION OF LAW:

Counts One, Two & Three -- Sustained as charged

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PRIOR RECORD:

Licensee has been licensed since October 7, 2005, and has one (1) prior violation, to wit:

Citation No. 08-0163. Fine \$1,350.00.

1. Sales between 2:00 a.m. and 7:00 a.m.
January 1, 2008.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
January 1, 2008.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
January 1, 2008.

DISCUSSION:

At the hearing held on the matter, the enforcement officers testified in detail as to their investigation of the licensed premises during the investigative period and on December 14, 2008. Licensee did not appear at the time and place set for the hearing. I closed the hearing at 2:32 p.m. At approximately 2:40 p.m., Licensee arrived, stating that had trouble finding the office. Licensee did not call the office to request directions or inform me that he would be late.

I find the testimony of the officers to be credible. I also find that the investigation was continuous and ongoing throughout the investigative period.

As such, the citation is sustained as charged.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

As to Counts One and Two, Licensee shall be treated as a repeat offender.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, the following fines will be imposed as the penalty in this case:

Counts One & Two (merged) -- \$500.00 fine.

Count Three -- \$500.00 fine.

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ORDER:

THEREFORE, it is hereby ordered that Licensee, W. J. Bauer, Inc., T/A Distractions, 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.

JURISDICTION IS RETAINED UNTIL CASE IS CLOSED.

Dated this 23RD day of December, 2009.



Robert F. Skwaryk, J.

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE 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

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