

Mailing Date: APR 12 2010

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2013
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-391803
	:	
v.	:	
	:	LID - 60630
	:	
THE MINES, INC.	:	
101-105 N. MAIN ST. LOWER LEVEL	:	
PO BOX 2	:	
WILKES-BARRE PA 18703-0002	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-5618	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Donald G. Karpowich, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 28, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Mines, Inc. (Licensee), License Number R-AP-SS-EHF-5618.

The citation charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on April 26, 2009, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated male patron.

1. Commonwealth Exhibit No. C-2, N.T. 13.

An evidentiary hearing was conducted on February 18, 2010 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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 30, 2009 and completed it on August 11, 2009. (N.T. 12)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on August 12, 2009. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 13)
3. On April 25, 2009, a Bureau Enforcement Officer entered the licensed premises in an undercover capacity at 11:45 p.m. (N.T. 14-18)
4. The Officer sat at the bar. He noticed an individual he thought was visibly intoxicated. The customer appeared to be with two other patrons. There was a hockey game on the television. The patron was excited. The group was intensely watching the game. The three were seated about five feet away from the Officer. What drew the Officer's attention to this individual was a statement made by another: "Shut up, you drunk." (N.T. 19-21)
5. There were three or four mixed drinks in front of the targeted customer. He drank two of them. His two friends drank one each. In response to the statement, the targeted customer lifted his glass saying: "That's fucking right. I am going to get bombed tonight." The targeted customer was constantly talking. His speech was loud, excited and extremely slurred. While he was watching the hockey game, he jumped up and down. He almost fell once or twice while standing. He was screaming profanity. He repeated very often the following: "That's mother fucking right." He also made several unsolicited statements to anybody in the premises relating to the game and that he was going to get bombed in celebration of his favorite team's win. (N.T. 21-22)

6. His friends encouraged him to slow down about three or four times. The bar staff approached the targeted customer and advised that he better calm down, “especially when you leave because you’re going to get arrested for being drunk.” Several minutes later, his friends were encouraging the targeted customer to leave. He responded by saying he wanted another drink. He ordered a rum and coke which was served him by a bartender. (N.T. 22-23) 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:

I find the Officer’s testimony not only to be credible but that his opinion as to the condition of the patron to be supported by substantial observation.

Licensee’s Sole Corporate Officer testified. I carefully watched his demeanor and could very readily tell Mr. Greco is easily excitable.² During the night in question, Mr. Greco was also outside the premises taking photographs of an incident involving the local police.

Mr. Greco’s testimony regarding a number of patrons present on the premises was reinforced by reviewing information of an ID scanner. Based on that value, Mr. Greco concluded there were a precise number of people that were scanned on the premises at midnight. I explained to Mr. Greco the fallacy in his logic (N.T. 75-86). The ID scanner records how many people were scanned in a given period of time. The ID scanner does not record the number of people that are present at any given moment.

While I find Mr. Greco to be truthful, I also conclude his obvious excitement and commitment to a belief that his business is being picked on, has colored his testimony. Accordingly, I do not accord significant weight to his testimony.

PRIOR RECORD:

Licensee has been licensed since October 8, 2008, 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.

2. Mr. Greco acknowledged my observation about him was accurate.

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 to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

I impose a \$1,250.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee 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.

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 25TH day of March, 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

Citation No. 09-2013 THE
MINES, INC.