

Mailing Date: OCT 27 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2128
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-397137
v.	:	
	:	LID - 9749
MARY SUE KEOWN	:	
T/A THUNDERBIRD TAVERN	:	
MAIN STREET	:	
MILDRED, PA 18632	:	
	:	
	:	
SULLIVAN COUNTY	:	
LICENSE NO. R-AP-1033	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: MARY SUE KEOWN, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 10, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MARY SUE KEOWN, License Number R-AP-1033 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] in that on July 24 and 25, 2009, she was visibly intoxicated on the licensed premises.

The second count charges Licensee with violation of Section 493(28) of the Liquor Code [47 P.S. §4-493(28)] in that on July 25, 2009 she consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

The investigation which gave rise to the citation began on July 10, 2009 and was completed on August 26, 2009; and notice of the violation was sent to Licensee by Certified Mail on August 28, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 21, 2010 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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:

COUNTS 1 AND 2

1. On July 24, 2009 at approximately 11:50 p.m. an officer of the Bureau arrived at the licensed premises. Upon entry the officer observed two patrons seated to his left, a DJ known as "DJ Mary," and the Licensee who was seated to the officer's right (N.T. 15).

2. As the officer approached the bar, Licensee went behind the bar and asked the officer what he wanted. The officer ordered a bottle of Miller Lite beer which he paid for (N.T. 15).

3. The officer had observed the Licensee during other investigations. Because of this he knew her mannerisms (N.T. 15-16).

4. The officer noted that the Licensee's speech was slurred. Her eyes were glassy and she was unsteady on her feet (N.T. 16).

5. The officer noted that on previous occasions her voice was soft but clear. On this occasion her speech was slurred. She kept repeating herself. She mumbled things. Her voice would drop off and basically would become inaudible. Then she would get very loud to the point where everyone in the bar could hear her. She had an unsteady gait. She used short steps. She would hold on to the bar side or the counter side from time to time as she walked. On previous occasions she had not done this (N.T. 19-20).

6. After the officer had received his first bottle of beer, Licensee began telling him how intoxicated she was. She kept saying she was drunk and she had been drinking all day. She related that early in the evening she had been so intoxicated that patrons made her sit on the patron side of the bar to sober up while they served themselves and got their own beers (N.T. 16).

7. At 12:05 a.m., now Saturday, July 25, 2009, Licensee picked up a small glass from underneath the counter on the bar which had a red liquid in it. It was a six ounce glass. The contents of the glass was approximately two ounces (N.T. 16).

8. Licensee came out from behind the bar and wanted the officer to dance with her. He refused to dance. He was standing and leaning against the bar with his elbows on the bar. She came up to the officer and started rubbing her pelvic area against his buttocks. She had her arms twirling in the air. The officer kept refusing. Licensee danced away from the officer and then came back. She then began rubbing her buttocks against the officer's buttocks. She kept telling him she wanted him to dance. The officer kept refusing (N.T. 16-17).

9. At approximately 12:40 a.m., Licensee went back behind the bar. She went down to the cooler where she got a bottle of wine out of the top left hand side of the cooler. The officer saw that it was Red Cat, a wine brand from Hazlitt Winery in New York. She poured some of the wine into the glass she had been using. She then returned the bottle to the cooler and continued to drink out of the glass (N.T. 17).

10. Licensee said to the officer, "If you're LCB, I'm in trouble now." She put her arms out, put her wrists together and said, "Just cuff me now and arrest me." She turned around and pulled a pair of handcuffs out of a drawer behind her. She tried to put the handcuffs on herself, but she did not have the hand-eye coordination to get the handcuff to snap around her wrist (N.T. 17-18).

11. Licensee took a container holding empty bottle caps, and started taking these caps and playfully throwing them at the officer (N.T. 18).

12. At 1:05 a.m., the officer purchased another bottle of Miller Lite beer (N.T. 18).

13. The officer indicated that he was leaving at 1:35 a.m. The Licensee offered him a place to stay. She indicated that they were going to have a fire in a fire pit and continue to party out there. When the officer said no Licensee offered him a camper to stay in overnight. When the officer said no to that she offered him her place to stay at that night also. The officer refused (N.T. 18-19).

14. Both beers that were served to the officer during this visit to the licensed premises were served by Licensee. She also served alcoholic beverages to the other patrons on the licensed premises. One of the patrons was drinking Captain and Coke. The other was drinking vodka and Coke (N.T. 19).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

DISCUSSION:

COUNT 1

The record establishes that Licensee clearly showed visible signs of intoxication while on the licensed premises. This has been held by this office to be a violation of Section 471 of the Liquor Code [47 P.S. §4-471]. *Janice Kemp, Citation No. 99-1330 (2000); Courtney, Inc., Citation No. 87-2595, II, Sel. Op. 205 (1988).*

Based on the foregoing, I conclude that the charge in Count 1 of the citation is sustained.

COUNT 2

Section 493(28) of the Liquor Code [47 P.S. §4-493(28)] makes it a violation for a Licensee to consume alcoholic beverages while tending bar or otherwise serving alcoholic beverages. The record in this case establishes that the Licensee was consuming red wine while serving alcoholic beverages to the officer of the Bureau and other patrons on the licensed premises. Consequently, I find that the charge in Count 2 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since May 24, 1983, and has had two prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 95-2846. 1 day suspension.

1. Sales during prohibited hours on an election day.

Citation No. 08-2444C. Fine \$750.00 and RAMP training mandated.

1. Sales to a minor. September 17, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Counts 1 and 2 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be suspension of license for a period of two days.

ORDER

IT IS HEREBY ORDERED that the restaurant liquor license (including all permits) of MARY SUE KEOWN, License No. R-AP-1033 be suspended for a period of two days **BEGINNING** at 7:00 a.m. on Tuesday, December 14, 2010 and **ENDING** at 7:00 a.m. on Thursday, December 16, 2010.

Licensee is directed on December 14, 2010 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on December 16, 2010 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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

Dated this 19TH 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.