

Mailing Date: JUN 17 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2251
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-394545
v.	:	
	:	LID - 43891
ANTHONY C. TORCHIA	:	
T/A LITTLE ANTHONY'S	:	
420 OHIO ST.	:	
LORAIN	:	
JOHNSTOWN, PA 15902-3116	:	
	:	
CAMBRIA COUNTY	:	
LICENSE NO. H-AP-1861	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Nadia L. Vargo, Esquire
LICENSEE: David A. Raho, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 25, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Anthony C. Torchia, t/a Little Anthony's (Licensee), License Number H-AP-1861.

This citation¹ contains three counts.

The first count charges Licensee with a violation of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on July 10, 2009, Licensee, by servants, agents or employes, used, or permitted to be used on the inside of his licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

1. Commonwealth Exhibit No. C-2, N.T. 4.

The second count charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on July 10, 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.

The third count charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471]. The charge is that on July 10, 2009, Licensee was visibly intoxicated on the licensed premises.

An evidentiary hearing was conducted on May 17, 2010 at the Hampton Inn, 180 Charlotte Drive, Altoona, 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 May 19, 2009 and completed it on July 16, 2009. (N.T. 7)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on July 29, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 4)

Count No. 1:

3. On July 10, 2009, a Bureau Enforcement Officer arrived at the premises at approximately 1:00 a.m. After exiting his vehicle, the Officer heard amplified music coming from the premises. (N.T. 7-9)

Count Nos. 2 and 3:

4. The Officer entered several minutes later. He noticed Licensee seated at the corner of the bar. The Officer took a seat immediately to the right of Licensee with one barstool separating the two. Licensee's eyes were heavy; it appeared as if he was falling sleep. His eyes were bloodshot and glassy. He had in his possession what appeared to be a sixteen ounce glass of beer. Licensee stood up and walked near the bar. Licensee's balance was unsteady; it appeared as if he was staggering. He returned to his position at the bar and sat down. Licensee engaged two patrons in conversation. It appeared to the Officer as if Licensee's speech was broken and unintelligible. It appeared to the Officer as if Licensee was mumbling and slurring his words. At 1:15 a.m., the bartender refilled Licensee's glass with beer. That draft beer was served at 1:15 a.m. Licensee finished that beer at 1:28 a.m. Licensee was served a second draft beer by the bartender. (N.T. 9-14)

5. Licensee was home all day prior to entering the premises at 9:00 p.m. He remained at the premises until closing. During the approximate four to five hours Licensee was at the premises, he consumed four, sixteen ounce draft beers and several glasses of water. (N.T. 27-28)

6. Licensee was a power lifter for over 35 years. He damaged his lower back which results in a “funny” walk at times. He began lifting weights when he was twelve. (N.T. 30-31; 59)

7. The bartender that evening remembers serving Licensee anywhere from three to five beers. Licensee was also drinking ice water between the beers the entire evening. (N.T. 66-69)

8. When Licensee sits for long periods, he has problems with his legs “giving out”. (N.T. 24)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

Count No. 1:

2. **Sustained** as charged.

Count No. 2:

3. The Bureau has **failed** to prove that on July 10, 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.

Count No. 3:

4. The Bureau has **failed** to prove that on July 10, 2009, Licensee was visibly intoxicated on the licensed premises.

DISCUSSION:

I carefully assessed Licensee's behavior at the hearing. When he rose from his chair to go to the witness stand, he displayed difficulty in walking that could be mistaken for staggering (N.T. 26). I also noticed what I would call a tick as Licensee's hands moved strangely from time to time. I noticed his hands were shaking (N.T. 31).

I also noticed Licensee's complexion was red. Even though Licensee claims he did not have a speech problem, I did notice there was a slight lisp when he testified (N.T. 31-32).

The other observations I made concerning Licensee's appearance and motor skills are consistent with those observed by the Officer. Combining my observations with Licensee's testimony, which I find to be credible, I conclude the Officer's assessment was inaccurate.

The Officer's assessment, although supported by observation, has been sufficiently explained by Licensee. My conclusion is also supported by the small volume of alcoholic beverages consumed by Licensee over the period of time that he was at the premises. Four or five sixteen ounce glasses of beer over a four or five hour period is hardly likely to cause one to be visibly intoxicated.

PRIOR RECORD:

Licensee has been licensed since April 16, 1999, and has had two prior violations (Commonwealth Exhibit No. C-3):

Adjudication No. 08-1314. Fine \$550.00.

1. Used loudspeakers or devices whereby music could be heard outside.
April 26, May 2, 10 and 11, 2008.
2. Noisy and/or disorderly operation.
April 26, May 2 10 and 11, 2008.

Adjudication No. 08-1819C. Fine \$1,250.00 and R.A.M.P.

Training mandated.

- Sales to a minor.
June 27, 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 Count No. 1.

I impose:

Count No. 1 – \$350.00 fine.
Count No. 2 – Dismissed.
Count No. 3 – Dismissed.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$350.00 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.

Dismissal of Count Nos. 2 and 3:

IT IS FURTHER ORDERED that Count Nos. 2 and 3 of Citation No. 09-2251, issued against Anthony C. Torchia, t/a Little Anthony's, are DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 8th day of June, 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. 09-2251
ANTHONY C. TORCHIA