

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. 09-2344
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-394595
v.	:	
	:	LID - 60491
ALP HOLDING CORP. OF PA	:	
T/A AJAYS CAFE	:	
2901-05 MAPLE AVE.	:	
ALTOONA, PA 16601	:	
	:	
BLAIR COUNTY	:	
LICENSE NO. R-AP-SS-14532	:	
	:	

**BEFORE:** JUDGE THAU  
**BUREAU COUNSEL:** Nadia L. Vargo, Esquire  
**LICENSEE:** Louis Grillo – Vice President/Secretary/Treasurer/Manager/Stockholder

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on November 16, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Alp Holding Corp. of Pa., t/a Ajays Cafe (Licensee), License Number R-AP-SS-14532.

This citation<sup>1</sup> contains two counts.

The first 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 18, 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.

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1. Commonwealth Exhibit No. C-2, N.T. 8.

The second count charges Licensee with violations of Section 5.32(a) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on July 18 and August 15, 2009, Licensee, by servants, agents or employes, used or permitted to be used on the inside of its licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

An evidentiary hearing was conducted on May 17, 2010 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. Licensee was represented by its Vice President, Secretary, Treasurer, Manager and Stockholder, Mr. L.G.

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 21, 2009 and completed it on September 10, 2009. (N.T. 10)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on September 25, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

Count No. 1:

3. While at the premises in an undercover capacity on July 18, 2009, a Bureau Enforcement Officer's attention was drawn to a customer who was seated at the bar and who appeared as though he was having a difficult time staying awake. His eyes were glassy and bloodshot. His head kept drooping over as if he were falling asleep. He had in his possession what looked to be a beer. After a short period of time, the targeted customer stood up and walked to the restroom. As he did so, he was having a difficult time maintaining his balance. He was stumbling and weaving from side to side. After several minutes, the targeted customer returned from the restroom, again stumbling. He took a seat at the bar, finished drinking the partially consumed beer. After several minutes, the bartender asked the targeted customer if he wanted anything else. The targeted customer's speech was extremely broken and slurred. The Officer was seated immediately next to the targeted customer. The Officer could not understand what the targeted customer was saying. The bartender asked the targeted customer three to four times if he wanted anything else. On the last occasion, the bartender remarked that she was not going to serve the targeted customer anything but that she would provide the targeted customer a twelve ounce bottle of beer to go. The targeted customer departed at 11:15 p.m., with the beer. (N.T. 18-21)

Count No. 2:

4. On July 18, 2009, a Bureau Enforcement Officer arrived at the premises at 10:55 p.m. Upon exiting his vehicle, he heard music, vocals, and bass but could not determine the source at that time. He walked to the front door of the premises. The front door was tied up, i.e. there was a piece of rope holding the door in an open position. He determined the music was coming from the licensed premises. The Officer paced off distances in four directions. The furthest direction was northwest. At a distance of approximately 264 feet, he heard music emanating from the premises. He entered the premises several minutes later and determined the source of the music was Karaoke. The music was being electronically amplified. (N.T. 15-18)

5. On August 15, 2009, the Officer returned to the premises. He again heard music emanating from the premises as far away as approximately 215 feet. He entered the premises and confirmed the music he heard outside was being provided by electronically amplified equipment. (N.T. 21-24)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count Nos. 1 and 2 are **sustained** as charged.

DISCUSSION:

Visibly Intoxicated Patron

What tips the scales in favor of the Bureau, was the bartender's declaration, prior to the service in question, to the effect that she was not going to serve the targeted customer anything other than one "to go." The bartender's awareness of the patron's condition, prior to service, supports the Officer's evaluation.

Loudspeaker Violation

I take Official Notice that the City of Altoona has two areas exempted from the regulation at issue. Licensee is not within those areas.

PRIOR RECORD:

Licensee has been licensed since November 13, 2008, and has had one prior violation (Commonwealth Exhibit No. C-3):

Adjudication No. 09-0308. Fine \$400.00.  
Sales to a visibly intoxicated person.  
December 6, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 1 and 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. 2 in this case.

I impose:

Count No. 1 – \$1,250.00 fine.  
Count No. 2 – \$250.00 fine.

I also order Licensee to comply with the requirements set forth in Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management, for a period of one year.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,500.00 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 must remain in compliance for a period of one year from the mailing date of this Adjudication.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 10th 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

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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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ALP HOLDING CORP. OF PA