

Mailing Date: NOV 03 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2373
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-400213
v.	:	
	:	LID - 23356
WAYNE H. MULL	:	
T/A FAIRVIEW INN	:	
146 W. CENTER ST.	:	
MILLERSBURG, PA 17061-1316	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. H-AP-SS-2602	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
LICENSEE: PRO SE**

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 15, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against WAYNE H. MULL, License Number H-AP-SS-2602 (hereinafter "Licensee").

The citation contains three counts.

The first count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on September 13, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two visibly intoxicated male patrons.

The second count charges Licensee with violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(3) and 4-493(16)] in that on September 13, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on September 13, 2009, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The investigation which gave rise to the citation began on September 3, 2009 and was completed on September 13, 2009; and notice of the violation was sent to Licensee by Certified Mail on September 30, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 15, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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, 2 AND 3

1. On September 13, 2009 at 12:50 a.m., an officer of the Bureau entered the licensed premises. Upon entry, the officer observed a female bartender rendering service to 20 patrons (N.T. 9-10).
2. The officer later learned that the name of the bartender was Marcie Davis (N.T. 10).
3. The officer took a seat at the bar. His attention was drawn to a male who was standing in the bar area, swaying from side to side and from front to back. His eyes were extremely bloodshot and glassy (N.T. 10-11).
4. The officer observed that this patron was incapable of walking in a straight line. He would veer to the left and veer to the right. When he stopped, he swayed back and forth (N.T. 11).
5. A short time later the patron approached the bar and took a position to the right of the officer. As he was standing at the bar, he swayed from side to side and from front to back. On several occasions he started to sway backwards and he would grab the lip of the bar to keep from falling backwards (N.T. 11-12).
6. As the officer observed him swaying from side to side, the patron fell to his left into the officer while the officer was seated at the bar. The patron looked at the officer and tried to engage him in conversation. The officer had no idea what the patron was saying, this patron's speech being extremely slurred and incoherent (N.T. 12).

7. The officer helped the patron up, and he eventually regained his balance and stood back up, leaning on the bar (N.T. 13).

8. At 1:28 a.m. the officer observed the bartender, Davis, pour six shots of Jagermeister liquor into a glass. She mixed some Red Bull energy drink with the Jagermeister and poured the mixture into six glasses. She gave one of the glasses to the above described patron. She gave the other five glasses to other patrons at the bar (N.T. 13).

9. Later in the evening the officer's attention was drawn to another patron. This patron was staggering around the bar, and his eyes were extremely bloodshot (N.T. 16).

10. While this second patron was stumbling around the bar he fell into chairs that were stacked around a table, knocking them over. He picked up the chairs and then stumbled back to the bar evidencing that he could not walk in a straight line (N.T. 16-17).

11. Once this second patron reached the bar, he sat down and engaged a female patron in conversation. The officer tried to listen in, but the speech of the second patron was extremely slurred and he was unable to make out most of what the patron was saying (N.T. 17).

12. Shortly thereafter, the bartender Davis poured a drink of Jagermeister liquor and Red Bull and presented it to this second patron and the female patron with him. The second patron drank this drink (N.T. 17).

13. The officer departed the licensed premises at 2:03 a.m. As he departed, there was a male patron at the end of the bar whose name was Kenneth Rickert, Jr. Rickert was in possession of a draft beer. There were also two or three other individuals from this party that had drinks in their hands (N.T. 19).

14. The officer went to his vehicle and contacted the State Police Lykens barracks and informed them that there were several individuals whom he believed were severely under the influence of alcohol and he was concerned that they were going to be driving home. He also called to find out if they had a car in the area to assist (N.T. 19-20).

15. At 2:40 a.m., the officer put on his issued State Police Cruiser jacket which clearly identifies him as a State Police Liquor Enforcement Officer. It has "State Police" across the front of it, and "Liquor Enforcement" on the back (N.T. 20).

16. The officer entered through the door through which he had departed. There is a glass window in the door. Through the window the officer observed the bartender Davis and Rickert sitting at the bar. Davis had in her hand a 12 ounce bottle of Bud Light lime beer. Rickert had a glass of draft beer in front of him (N.T. 20).

17. At 2:45 a.m. the officer observed Davis drink out of the bottle of Bud Light lime beer, and at 2:49 a.m. he observed Rickert drink from the draft beer (N.T. 20-21).

18. At 2:53 a.m. the officer knocked on the door to the premises. He identified himself as State Police Liquor Enforcement. Davis came to the door. She opened the door. The officer identified himself to her and told her that he had observed several violations inside the premises while he was there and he needed to talk to her (N.T. 21).

19. The officer entered the premises and discussed the sale of alcohol to the visibly intoxicated patrons. At that time Davis stated that she knew the individuals were intoxicated, but they were with a wedding party and she knew that they had individuals driving them home (N.T. 21).

20. The officer also discussed with Davis the drinking of the Bud Light lime beer and the drinking of the draft beer by Rickert after 2:30 a.m. Davis stated that it was her End-of-the-Night drink. She had only had one (N.T. 21).

CONCLUSIONS OF LAW:

Counts 1, 2 and 3 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since March 31, 1989, and has had three prior violations:

Citation No. 91-0120. Fine \$500.00.

1. Sales to a visibly intoxicated person.

Citation No. 03-0601. Fine \$1,500.00.

1. Operated in a disorderly manner in that you permitted your employes to be improperly attired or engaged in open lewdness. March 1, 2003.
2. Permitted persons to be improperly attired or engage in open lewdness on the licensed premises. March 1, 2003.
3. Permitted lewd, immoral or improper entertainment.

Citation No. 08-1615. Fine \$300.00.

1. Sold furnished or gave liquor for consumption off premises. May 9, 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 Counts 1 and 2 of this case.

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 3 of this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$1,250.00 fine and RAMP training  
Counts 2 & 3 merged - \$1,500.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee WAYNE H. MULL, pay a fine of \$2,750.00 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.

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](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto:LBEducation@state.pa.us)) within 30 days of the mailing date of this Adjudication. 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.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the liquor Code [47 P.S. §4-471(d)].

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

Dated this 18<sup>TH</sup> 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.**

**Detach here and submit 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.** Make 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. 09-2373  
Wayne H. Mull