

Mailing Date: JUL 28 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2482
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-398487
	:	
v.	:	LID - 58815
	:	
WEE DADDY'S LOUNGE LLC	:	
T/A WEE DADDY'S	:	
22-24 W MAIN ST	:	
NORRISTOWN PA 19401-4741	:	
	:	
	:	
MONTGOMERY COUNTY	:	
LICENSE NO. R-AP-SS-EHF-14471	:	

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: Aaron Hill

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on November 2, 2009. There are four counts in the citation.

The first count alleges that Licensee violated §493(10) of the Liquor Code, 47 P.S. §4-493(10), on September 25, 2009, by permitting a disc jockey to play music and vocalize until 2:35 a.m.

The second count alleges that Licensee violated §§406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), on September 25, 2009, by selling, furnishing and/or giving alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The third count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on September 25, 2009, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The fourth count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on September 25, 2009, by permitting 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.

A hearing was held on May 25, 2010, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On September 25, 2009, a liquor enforcement officer arrived in the area of the licensed premises at about 1:05 a.m. When he got out of his vehicle, at a place on Main Street about one hundred feet from the premises, he heard music. When he entered the premises the officer found that the music he had heard was coming from two loudspeakers being used by a disk jockey (N.T. 5-6).

2. The officer was frisked and required to pay a ten dollar cover charge. He seated himself at the bar. There were 45 to 50 patrons, attended by two bartenders. The officer did not hear "last call" announced during this visit. At 2:00 a.m. there were 15 patrons seated at the bar or standing near it, and another 30 patrons elsewhere in the premises. At 2:08 a.m. the officer asked for a 12-ounce bottle of Coors Light beer, which was served to him (N.T. 6-7).

3. At 2:10 a.m. the disk jockey announced that any patrons who were not "VIPs" would have to leave the premises. He said this roughly three times, but no one left. At 2:13 a.m. Licensee's manager and owner, Aaron Hill, identified himself to the officer and told him that he would have to finish his drink and leave, since he wasn't a "VIP." The officer asked what a "VIP" was and how he could become one. Mr. Hill told him that he "could come back later and become one" but that for now he would have to leave. Mr. Hill and another man escorted the officer out. At that time there were still 12 patrons at the bar in possession of alcoholic beverages and another 30 patrons on the dance floor and in other areas of the premises (N.T. 7-8).

4. The officer remained outside the premises, where he continued to hear music from the loudspeakers inside. At 2:17 a.m., four male patrons entered the premises. The officer did not see anyone leave. At 2:25 a.m. he called the Norristown Police Department from his cell phone and requested assistance. At 2:31 a.m. uniformed officers of the Norristown Police Department approached the liquor enforcement officer, who identified himself to them. The officers went to the front door, which was locked. They could still hear music. At 2:41 a.m. Mr. Hill opened the door (N.T. 9-10).

5. Two of the men the officer had seen enter the premises at 2:17 a.m. were seated at the bar, in possession of partially consumed bottles of beer. The officer explained to Mr. Hill that people could not be in the premises drinking alcohol after 2:30 a.m. Mr. Hill did not see it that way, because the establishment has an "Extended Hours – Food" permit from the Board (N.T. 11).

CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

Licensee's officer gave testimony contrary to that presented by the Bureau's witness, but I found the officer's testimony more credible.

The Liquor Code provides, in 47 P.S. §4-499, relating to "premises to be vacated by patrons" that:

(a) Except as provided for elsewhere in this section, all patrons of a licensee shall be required to leave that part of the premises habitually used for the serving of liquor or malt or brewed beverages to guests or patrons not later than one-half hour after the time the

licensee is required by this act to cease serving liquor or malt or brewed beverages and shall not be permitted to have any previously served liquor or malt or brewed beverages in their possession, nor shall they be permitted to remove any previously served liquor or malt or brewed beverages from that part of the premises. Patrons of a licensee shall not be permitted to reenter that portion of the premises habitually used for the serving of liquor or malt or brewed beverages between the time designated by this act for patrons to vacate the licensed premises and the time designated by this act when the serving of liquor or malt or brewed beverages is allowed to begin unless the licensee has been granted a permit for extended hours food service.

....

(b) A licensee may remain open between the hours of two o'clock antemeridian and seven o'clock antemeridian for the purpose of serving food on any day if such licensee either possesses or is eligible to purchase a Sunday sales permit and receives an extended hours food license. The board shall establish an annual fee for the extended hours food license which shall not exceed fifty dollars (\$ 50).

To comply fully with the law, a restaurant licensee with an Extended Hours – Food (EHF) permit must not dispense any alcoholic beverages after 2:00 a.m. Patrons may remain in the premises, in possession of alcoholic beverages, only until 2:30 a.m. At or before that time, the licensee must remove any previously-served alcoholic beverages which have not been consumed.

In other words, patrons of an EHF licensee may enter or remain in licensed premises after 2:30 a.m., but they may not possess or consume alcoholic beverages after that time.

Licensee's officer's comments to the officer seemed to indicate that he thought it was all right to turn the premises into a private club after 2:30 a.m. by designating some people as "VIPs." This is not what the EHF permit does. In fact, Licensee was actually violating the liquor enforcement officer's civil rights by evicting him at 2:13 a.m. while letting other people remain in the premises.

This is because restaurants are places of public accommodation. Members of the public cannot be excluded from public accommodations on terms different from those extended to other members of the public, such as those regarded by this Licensee as "VIPs."

PRIOR RECORD:

Licensee has been licensed since April 29, 2009, 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, or both, for violations of the type found in this case. For violations of the type found in the first, third and fourth counts, any fine must be in the \$50.00 to \$1,000.00 range. For violations of the type found in the second count any fine must be in the \$1,000.00 to \$5,000.00 range. Penalties are assessed as follows:

- Count No. 1 – a fine of \$200.00.
- Count No. 2 – a fine of \$1,000.00.
- Count No. 3 – a fine of \$250.00.
- Count No. 4 – a fine of \$250.00.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Wee Daddy's Lounge, LLC, t/a Wee Daddy's, License No. R-AP-SS-EHF-14471, shall pay a fine of one thousand seven hundred dollars (\$1,700.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 8TH day of JULY, 2010.



David L. Shenkle, J.

jb

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. 09-2482
Wee Daddy's Lounge, LLC