

Mailing Date: APR 07 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-2624
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-400417
v.	:	
	:	LID - 55873
ST. GEORGE & MARY, INC.	:	
5327 E. TRINDLE RD.	:	
MECHANICSBURG, PA 17050-3525	:	
	:	
CUMBERLAND COUNTY	:	
LICENSE NO. R-AP-SS-EHF-19383	:	
	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: John H. Pietrzak, Esquire
LICENSEE: Charles E. Gutshall, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 12, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against St. George & Mary, Inc. (Licensee), License Number R-AP-SS-EHF-19383.

This citation¹ 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 October 2, 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.

1. Commonwealth Exhibit No. C-2, 09-2624, N.T. 10.

The second count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(2) of the Clean Indoor Air Act [35 P.S. §637.6(a)(2)]. The charge is that on October 2, 3 and 4, 2009, Licensee, by servants, agents or employes, permitted smoking in a public place where smoking is prohibited.

An evidentiary hearing was conducted on February 28, 2011 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. Licensee did not challenge the second count. (N.T. 10)

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 September 15, 2009 and completed it on October 19, 2009. (N.T. 22)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on October 27, 2009. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, 09-2624, N.T. 10)

Count No. 1:

3. On Friday, October 2, 2009, at 10:55 p.m., a Bureau Enforcement Officer entered the premises in an undercover capacity. (N.T. 22-23)

4. The Officer observed a customer who was standing, weaving, and wobbling. He was very loud. His speech was slurred. The Officer took a seat to the immediate right of the targeted customer, at the corner of the bar. (N.T. 26)

5. At one point, the customer grabbed onto the bar counter, leaned directly into the Officer's face and said loudly: "Look at the pretty girl." His eyes were bloodshot. He smelled of beer. He struggled to stand on his feet. As women customers walked by, he struggled to his feet to approach the women and loudly remarked: "Hi, don't I know you?" (N.T. 26-27)

6. He reached into his windbreaker and pulled out a plastic bag containing cookies and candy. When women circled to avoid the patron, he remarked: "You're hot as balls. I love you." He did so loudly and with slurred speech. (N.T. 27)

7. At 11:00 p.m., the jukebox began to play. The targeted customer began to play an air guitar. As he did so, he threw himself back, nearly tipping over his seat. He grabbed onto the bar, pulled himself forward and held his hands up saying: "I'm too drunk to do that."² Moments after this, the targeted customer stood up and announced he had to go to the bathroom. (N.T. 28-29)

8. He staggered, stumbled, and growled loudly. At 11:10 p.m., the bartender served the customer a sixteen ounce draft beer. The customer was hooting, hollering and looking inside his pockets apparently to pay for the beer. (N.T. 29-30)

9. Observing no further service of alcoholic beverages to the targeted customer, the Officer departed the premises at 12:15 a.m., October 3, 2009. (N.T. 34)

Count No. 2:

10. On the dates charged, a Bureau Enforcement Officer was at the licensed premises and observed patrons smoking. Since those visits, Licensee received an exemption. Licensee is now permitted to allow smoking at its premises. (N.T. 11-16)

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.

2. This declaration constitutes a present sense impression of the declarant's then existing condition.

DISCUSSION:

I am satisfied the Officer's observations accurately depict a visibly intoxicated patron who was served an alcoholic beverage. The Officer's observations are supported by the customer's self evaluation (Finding of Fact No. 7).

It was Licensee's position the Officer's testimony reflects the customer's natural demeanor. First, I am not convinced the individual whom the Officer watched is the same person described by Licensee's witness. Moreover and as I have stated in any number of Adjudications, it is the customer who is known to a licensee where the danger lies. Licensee is likely to be less vigilant with a regular customer than with an unknown one.

I cannot accord the barmaid's testimony significant weight. While she made every effort to be candid and truthful, her memory was vague. As a demonstration of the barmaid's inconclusive memory she testified she did not recall seeing the Officer that evening.

At the hearing, I heard no testimony regarding Count No. 2 as the parties stipulated to the facts supporting the charge (N.T. 10-11). By doing so, Licensee acknowledges the Officer was present on October 2, 2009. Accordingly, the barmaid's inability to recall the Officer's presence serves to underscore her unclear memory.

PRIOR RECORD:

Licensee has been licensed since February 9, 2006, and has had two prior violations (Commonwealth Exhibit No. C-3, 10-1780):

Adjudication No. 06-2638. Fine \$350.00.
Refilled liquor bottles.
October 6, 2006.

Adjudication No. 07-1851. Fine \$350.00.
Sold malt or brewed beverages in excess
of 192 fluid ounces for consumption off
premises.
February 16 and April 4, 2007.

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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Having heard from Licensee's witnesses, I am convinced Licensee is sincere and dedicated to operating within the law.

Accordingly, I impose:

Count No. 1 - \$1,250.00 fine.
Count No. 2 - \$ 200.00 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 from the mailing date of this Adjudication.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,450.00 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 1ST day of April, 2011.


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. 09-2624
ST. GEORGE & MARY, INC.