

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. 09-2676
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-398597
v.	:	
	:	LID - 50754
MATTHEW W. WALKER	:	
CRYSTAL D. WALKER	:	
T/A NEW NATIONAL HOTEL	:	
302 MAIN ST.	:	
BERLIN, PA 15530-1260	:	
	:	
SOMERSET COUNTY	:	
LICENSE NO. H-AP-SS-2101	:	

BEFORE: JUDGE THAU

BUREAU COUNSEL: Emily L. Gustave, Esquire

LICENSEE: Matthew W. Walker and Crystal D. Walker, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 20, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Matthew W. Walker and Crystal D. Walker, t/a New National Hotel (Licensee), License Number H-AP-SS-2101.

The citation charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on August 12, 2009, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) visibly intoxicated male patrons.

An evidentiary hearing was conducted on May 17, 2010 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. The Licensees represented themselves.

1. Commonwealth Exhibit No. C-3, N.T. 7.

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 August 10, 2009 and completed it on October 17, 2009. (N.T. 11)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on November 3, 2009. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

3. On August 12, 2009, a Bureau Enforcement Officer entered the premises in an undercover capacity at 6:05 p.m. The Officer sat down at the bar. Immediately to the Officer's left there was a patron who, in the opinion of the Officer, was intoxicated. (N.T. 11-12)

4. The targeted customer was drinking a twelve ounce can of beer. He displayed slurred speech. When the Officer looked at the targeted customer, the customer's pupils looked "pinpoint." The targeted customer ordered a beer shortly after the Officer arrived. The targeted customer took money out of his wallet which he was fumbling through. The targeted customer was served by Co-licensee, C.W. As he was drinking the beer that he was just served, he spilled some out of the can. At 6:30 p.m., the targeted customer continued to demonstrate signs of visible intoxication judged by the undercover Enforcement Officer. At 6:30 p.m., the targeted customer ordered another can of beer. The Officer attempted to take a photograph of the targeted customer by using his cell phone. Co-Licensee, C.W. appeared to notice this attempt and questioned the Officer. The Officer told C.W. that he was just texting. (N.T. 13-14)

5. A patron at the end of the bar approached the Officer. He had been talking to C.W. prior to his approach. This customer's speech was slurred and he staggered when he approached the Officer. The Officer engaged this customer in conversation. The customer advised the Officer that C.W. was concerned about the picture taking. This customer was served a draft beer while the Officer was talking to him. (N.T. 15-16)

6. C.W. has lived in Berlin all her life. She worked for another licensed facility for seventeen years. She knows the people in the town and the surrounding area. She knows the clientele that frequent the licensed establishment. She can name virtually everybody sitting at her bar. She knows their personal history. (N.T. 30-31)

7. C.W. is familiar with everyone that comes into her establishment. She is particularly cautious. That is why she noticed the Officer as he was an unfamiliar face. When the Officer attempted to take a photograph with his cell phone, C.W. became concerned that the Officer might be attempting to engage in some criminal conduct. Because she did not know the Officer's intentions, she went to the far end of the bar to discuss the Officer's behavior with the customers there, particularly telling them to remember the Officer's appearance for future reference. (N.T. 31-36)

8. C.W. recognizes four patrons that drink Budweiser cans instead of bottles. She believes the customer, identified by the Officer, is named Barry. He lives in a room in the hotel. He works for a local sandblasting company. He works Monday through Friday, 9:00 a.m. to 5:00 p.m. He gets picked up for work at the bar and is dropped off at the bar after work by a co-worker. Because of the sandblasting occupation, when he comes into the premises, he has sand through his hair. It filters in his pockets and shoes. His money is also covered with sand. (N.T. 47-54)

9. The second patron who confronted the Officer is also known to C.W. His nickname is Duck. Thirty years ago, Duck attempted to commit suicide by putting a gun in his mouth and firing. Duck has gone through reconstructive surgery which left him with two teeth, half a tongue and a scar down the side of his cheek. Duck does not have enough money to drink a lot. He has to budget his money as he lives on disability. C.W. served Duck no more than three, ten ounce draft beers. (N.T. 40-41)

CONCLUSIONS OF LAW:

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

2. The Bureau **failed** to prove that on August 12, 2009, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two (2) visibly intoxicated male patrons.

DISCUSSION:

I am satisfied that Licensee's explanation for the behavior of both patrons is supported by factors other than visible intoxication (N.T. 51). I am also impressed with the strength of C.W.'s conviction, that she would not do anything to affect her livelihood negatively. It is, in fact, the strength of her conviction which convinces me C.W. was well aware of who was on the premises as well as the sobriety of each. I am further convinced the Officer's observations of both patrons have been satisfactorily explained by Licensee as having been caused by factors other than visible intoxication (N.T. 53). I further find her identification of the two targeted customers, as Duck and Barry, to be accurate.

Accordingly, I dismiss the citation.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 09-2676, issued against Matthew W. Walker & Crystal D. Walker, t/a New National Hotel, is DISMISSED.

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.