

Mailing Date: NOV 09 2010

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0018
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-397150
	:	
v.	:	
	:	LID - 10788
	:	
S. & B. RESTAURANT, INC.	:	
T/A THE WOODLANDS, AN INN	:	
1073 RTE. 315	:	
WILKES BARRE, PA 18702-6926	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-3050	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: STEVEN M. GREENWALD, ESQUIRE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 15, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against S. & B. RESTAURANT, INC., License Number R-AP-SS-3050 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on July 9 and 10, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one female minor, nineteen years of age.

The investigation which gave rise to the citation began on July 13, 2009 and was completed on December 17, 2009; and notice of the violation was sent to Licensee by Certified Mail on December 8, 2009. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 7, 2010 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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:

1. J.S. was born on July 31, 1989, and, on July 9 and 10, 2009, she was 19 years old (N.T. 28).
2. On July 9, 2009 J.S. went to the licensed premises, arriving at approximately 10:45 p.m. (N.T. 28).
3. J.S. had originally intended to go to an underage function in a portion of the licensed premises known as Evolution (N.T. 28).
4. While J.S. was in the parking lot with her friends, she observed a group of male patrons coming out of the licensed premises wearing wristbands. She asked the male patrons for a wristband, and one of the male patrons took off his wristband and "restuck it" on her arm (N.T. 28-29).
5. J.S. entered the licensed premises with her friends. She showed her wristband and walked into the second set of double doors. At this point there was an option to go up a ramp to the bar area or to go into Evolution which is where the underage individuals were supposed to go (N.T. 29).
6. At the double door area, a bouncer shined a light on the wrist of J.S. to see if she had a wristband on. Upon seeing the wristband he let her go through to the bar area (N.T. 29).
7. Upon reaching the bar area, J.S. realized that there was only 15 minutes left until happy hour was over when mixed drinks were \$1.00 a piece. She therefore purchased three mixed alcoholic beverages of vodka and pineapple juice. The three drinks were served to her by a female bartender. She paid \$3.00 for the three drinks (N.T. 30-31).
8. Shortly before midnight, J.S. had finished her drinks and left the licensed premises and went to get pizza (N.T. 31).

9. After going for pizza, J.S. returned to the licensed premises after midnight, now July 10, 2009 (N.T. 31).

10. Upon returning to the licensed premises, she went through the same route she had gone on her previous visit again going to the bar area (N.T. 32).

She ordered and was served a bottle of Miller Lite beer for which she paid \$3.00 (N.T. 33).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The record in this case clearly establishes that a 19 year old female was served three mixed alcoholic beverages late in the evening on July 9, 2009 and a bottle of beer in the early morning hours of July 10, 2009. There is no indication in the record that Licensee obtained a Declaration of Age card, or made a photostat of the minor's picture identification card. Further, there is no indication that the minor's photo identification card was identified as a valid card by a transaction scan device. Consequently, I conclude that the charge in the citation has been sustained.

PRIOR RECORD:

Licensee has been licensed since April 21, 1969, and has had nine prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 90-2567. Fine \$75.00.

1. Failed to notify the Board within 15 days of a change of officers, directors and/or stockholders.

Citation No. 93-2535. Fine \$3,000.00.

1. Sold liquor for consumption off premises.
2. Sales to a minor.

Citation No. 93-2637. Fine \$1,000.00.

1. Sales to a minor.

Citation No. 94-1496. Fine \$550.00.

1. Refilled liquor bottles.
2. Fortified, adulterated and/or contaminated liquor.

3. Failed to break empty liquor bottles within 24 hours.
to have copies on the licensed premises of
under 21 years of age.

4. Failed
birth certificates for employes

Citation No. 04-2081. Fine \$1,250.00.

1. Sales to visibly intoxicated persons. October 1, 2004.

Citation No. 05-0820. Fine \$1,250.00 and RAMP training mandated.

1. Sales to visibly intoxicated persons. December 3, 2004.

Citation No. 05-2634. Fine \$1,500.00.

1. Sales to a visibly intoxicated person. July 9, 2005.

Citation No. 07-2605C. Fine \$1,500.00 and RAMP training mandated.

1. Sales to a minor. September 26, 2007.

Citation No. 08-1845. Fine \$1,500.00 and RAMP training mandated.

1. Sales to visibly intoxicated persons. June 21 and July 3, 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 this case. Further, Section 471(c) requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

This office takes notice that Licensee became RAMP certified effective December 14, 2009.

Under the circumstances of this case, the penalty imposed shall be a fine of \$2,000.00, three days suspension and Licensee must remain RAMP compliant.

ORDER

THEREFORE, it is hereby ordered that Licensee S & B RESTAURANT, INC., pay a fine of \$2,000.00 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.

S. & B. RESTAURANT, INC.

CITATION NO. 10-0018

PAGE 5

IT IS FURTHER ORDERED that Licensee's liquor license (including all permits) License No. R-AP-SS-3050 be suspended for a period of three days **BEGINNING** at 7:00 a.m. on Monday, January 3, 2011 and **ENDING** at 7:00 a.m. on Thursday, January 6, 2011.

Licensee is directed on January 3, 2011 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on January 6, 2011 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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 until **November 5, 2011**.

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

Dated this 28TH day of October, 2010.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

Daniel T. Flaherty, Jr., J. an

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

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. 10-0018 S
& B Restaurant, Inc.