

Mailing Date: SEP 09 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0183
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-401985
v.	:	
	:	LID - 10630
BRYN MAWR CAFÉ, INC.	:	
T/A BRYN MAWR CAFE	:	
1344-46 BRYN MAWR STREET	:	
SCRANTON, PA 18504	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-2687	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: NO APPEARANCE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 5, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against BRYN MAWR CAFÉ, INC., License Number R-AP-SS-2687 (hereinafter "Licensee").

The citation contains four counts.

The first count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)] in that on October 17 and December 19, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on October 17, 24 and December 19, 2009, Licensee, by its servants, agents or employes, failed 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 third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on December 19, 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 fourth count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on December 19, 2009, Licensee, by its servants, agents or employes, permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m., when it did not possess an Extended Hours Food Permit.

The investigation which gave rise to the citation began on October 13, 2009 and was completed on January 13, 2010; and notice of the violation was sent to Licensee by Certified Mail on January 19, 2010. 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. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee(s) at its address of record, 1344-46 Bryn Mawr Street, Scranton, PA 18504 by certified mail, return receipt requested and by first class mail on May 7, 2010. The notice set forth the date and time of the hearing as July 7, 2010 at 10:45 a.m., and the place of hearing as Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, PA 18503.

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, 3 AND 4

1. On October 17, 2009 at 1:30 a.m., an officer of the Bureau entered the licensed premises in an undercover capacity (N.T. 7).
2. At 2:00 a.m., the bartender poured ten or eleven shots including southern comfort and tequila. The bartender continued to serve beer until 2:14 a.m. The officer was served a Yuengling Lager beer at 2:14 a.m. (N.T. 7-8).
3. After serving the officer the beer at 2:14 a.m., last call was made (N.T. 8).
4. The officer departed the licensed premises at 2:20 a.m. leaving 20 people inside the licensed premises (N.T. 8-9).
5. The officer maintained outside surveillance to see whether the people inside departed by 2:30 a.m. (N.T. 9).

6. The officer maintained surveillance until 2:50 a.m., and during that time saw 10 people depart the licensed premises leaving 10 people on the premises at 2:50 a.m. (N.T. 9-10).

7. On October 24, 2009, the officer again entered the licensed premises at 1:35 a.m. in an undercover capacity (N.T. 11).

8. Last call was made at 2:00 a.m., and no more drinks were served after 2:00 a.m. (N.T. 11).

9. The officer stayed on the licensed premises until 2:30 a.m. when there were more than 10 patrons still inside the licensed premises. At that point he went outside and conducted outside surveillance to see whether the patrons exited the premises. He maintained outside surveillance until 2:50 a.m. and did not see any patrons depart the licensed premises (N.T. 12).

10. On December 19, 2009 the officer arrived at the licensed premises at 2:47 a.m. At that time there were 11 vehicles in the parking lot. The officer maintained outside surveillance until 3:10 a.m. and saw no one enter or leave the licensed premises. The officer then called the Lackawanna County Communications Center 911 and requested Scranton Police Department assistance as he was going to do an after hours "push-in." (N.T. 13-14).

11. At 3:15 a.m., the officer, with the assistance of the Scranton Police Department was able to gain entrance to the licensed premises (N.T. 14).

12. Scranton Police officers encountered two female patrons attempting to exit the licensed premises through a right hand door as the officer was coming in the back door (N.T. 14-15). The officer encountered a male patron who had left the downstairs area of the licensed premises at 3:15 a.m. (N.T. 15).

CONCLUSIONS OF LAW:

Counts 1, 2, 3 and 4 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since May 3, 1989, and has had ten prior violations:

Citation No. 92-0410. Fine \$500.00.

1. Sales to a visibly intoxicated person.

Citation No. 93-1323. Fine \$200.00.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 95-1081. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 04-0430. Fine \$150.00.

1. Permitted entertainment without an Amusement Permit. February 28, 2004.

Citation No. 04-1853. Fine \$250.00.

1. Engaged in unlawful discrimination in that you provided alcoholic beverages to female patrons at a reduced price while charging full price to male patrons. September 27, 2004.

Citation No. 05-0336. Fine \$550.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine). February 1, 2005.

Citation No. 06-0661X. Fine \$150.00.

1. Issued worthless checks in payment for purchases of malt or brewed beverages. December 30, 2005.

Citation No. 08-2624. Fine \$1,250.00.

1. Sales after the license expired and had not been renewed and/or validated. October 3, 2008.

Citation No. 09-1166. Fine \$200.00.

1. Failed to post signage required by the Clean Indoor Air Act. April 3, 2009.
2. Permitted smoking in a public place where smoking is prohibited. April 3, 2009.

Citation No. 09-2526. Fine \$1,250.00.

1. Sales after the license expired and had not been renewed and/or validated. October 1, 2009.

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 of 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.

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 Nos. 2, 3 and 4 of this case.

Counts 2, 3 and 4 arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

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

Count 1 - \$1,500.00 fine and 1 day suspension
Counts 2, 3 and 4 merged - \$750.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee BRYN MAWR CAFÉ, INC., pay a fine of \$2,250.00 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's liquor license (including all permits) License No. R-AP-SS-2687 be suspended for a period of one day. However, the suspension period is deferred pending reactivation of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the dates for suspension.

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

Dated this 1ST day of September, 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

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. 10-0183
Bryn Mawr Café, Inc.