

Mailing Date: DEC 03 2010

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-0372
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-405705
v.	:	
	:	LID - 54826
SORBS' PLACE, INC.	:	
T/A SORBS' PLACE	:	
RR 2, BOX 306	:	
LIVERPOOL, PA 17045-9701	:	
	:	
	:	
PERRY COUNTY	:	
LICENSE NO. R-AP-SS-20159	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL BALLARON
LICENSEE: WENDY S. SORBER, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 11, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against SORBS' PLACE, INC., License Number R-AP-SS-20159 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(3) and 4-493(16)] in that on November 22, 2009, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 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 January 31, 2010, 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 investigation which gave rise to the citation began on November 22, 2009 and was completed on January 31, 2010; and notice of the violation was sent to Licensee by Certified Mail on February 26, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on September 16, 2010 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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:

COUNT 1

1. On November 22, 2009 at 1:00 a.m., an officer of the Bureau arrived at the licensed premises. Tending bar and rendering service to 20 patrons was corporate president Wendy Sorber. Sitting at the end of the bar as a patron was her husband, Robert Sorber (N.T. 12).

2. At 2:05 a.m., Mr. Sorber was engaged in a conversation with an individual at the bar. Mrs. Sorber walked up to his individual who was seated next to Mr. Sorber with an empty glass in front of him. She took the glass, walked down to the area where the liquor is kept behind the bar, looked down at Mr. Sorber and said, "Is it alright? I don't know everybody that's here." Mr. Sorber looked at her and responded, "Yeah, go ahead." (N.T. 12)

3. Mrs. Sorber then obtained a bottle of Captain Morgan Spiced Rum from behind the bar, poured some of the contents into the glass and mixed it with what appeared to be cola (N.T. 12)

4. The time of the service by Mrs. Sorber was 2:05 a.m. (N.T. 12-13).

COUNT 2

5. On January 31, 2010 the officer arrived at the licensed premises at 2:25 a.m. He found the doors to the building locked and there were approximately 25 vehicles in the parking lot. He returned to his vehicle and conducted surveillance of the premises (N.T. 14).

6. Between 2:30 a.m. and 2:40 a.m. the officer observed 12 individuals depart the premises and enter their vehicles and depart (N.T. 14)

7. At 2:40 a.m. the officer put on his issued "cruiser jacket," which clearly identifies him as a State Police Liquor Enforcement Officer. He then walked around the perimeter of the building to try to find an unlocked door. He found all the doors to be locked (N.T. 14).

8. The officer then went and stood right in front of the front door waiting to see if any other individuals departed (N.T. 14-15).

9. At 2:43 a.m., Mr. Sorber unlocked the front door. As soon as he opened the door the officer identified himself to him (N.T. 15).

10. There were two individuals at the door with Mr. Sorber. One was a male who identified himself as Johnny. Johnny's speech was extremely slurred and he had a hard time standing up. There was also a female (N.T. 15).

11. The officer talked with Mr. Sorber and these two individuals. The female stated that she was there to take Johnny home because in her own words, he was too drunk to drive (N.T. 15-16).

CONCLUSIONS OF LAW:

The charges in Counts 1 and 2 of the citation are **sustained**.

DISCUSSION:

COUNT 1

The record discloses that Licensee's corporate president served a rum and Coke mixed alcoholic drink to a patron after 2:00 a.m. Consequently, despite the fact that other clocks in the licensed premises said different times, the charge in Count 1 of the citation is sustained.

COUNT 2

The record establishes that a patron was escorted out of the licensed premises at 2:43 a.m. This is 13 minutes past the time when all patrons must have vacated the licensed premises. Therefore, I conclude that the charge in Count 2 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since July 6, 2005, and has had five prior violations:

Citation No. 06-0670. Fine \$1,200.00.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m. February 19, 2006.

Citation No. 08-2633X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 2 and 19, 2008.

Citation No. 08-3012X. Fine \$175.00.

1. Issued worthless checks in payment for malt or brewed beverages. October 10, 2008.

Citation No. 09-1407. Fine \$300.00.

1. Permitted smoking in a public place where smoking was prohibited. March 26, 2009.
2. Failed to post signage required by the Clean Indoor Air Act. March 26, 2009.

Citation No. 10-0026X. Fine \$250.00.

1. Issued worthless checks in payment for malt or brewed beverages. August 11, 31, September 29, October 20, 27 and November 3, 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 1 of this case.

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 2 of this case.

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

Count 1 - \$1,250.00 fine
Count 2 - \$ 300.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee SORB'S PLACE, INC., pay a fine of \$1,550.00 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.

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

Dated this 10TH day of November, 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. 10-0372
Sorb's Place, Inc.