

Mailing Date: MAR 22 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1203
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-411478
v.	:	
	:	LID - 24379
THE NEW HOLLAND PUB, INC.	:	
T/A THE PUB	:	
503 E. MAIN ST.	:	
NEW HOLLAND, PA 17557-1406	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. R-AP-SS-17365	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Thomas M. Ballaron, Esquire
LICENSEE: Stephen W. Cody, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 8, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The New Holland Pub, Inc., t/a The Pub (Licensee), License Number R-AP-SS-17365.

The citation¹ charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on April 13, 2010, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age.

An evidentiary hearing was conducted on February 23, 2011 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

1. Commonwealth Exhibit No. C-2, N.T. 5.

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 April 16, 2010 and completed it on May 20, 2010. (N.T. 7)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on June 1, 2010. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 5)

CONCLUSIONS OF LAW:

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

2. The Bureau has **failed** to prove that on April 13, 2010, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, twenty (20) years of age.

DISCUSSION:

I enter no Findings of Fact for the charge in question, as I find the Bureau's two witnesses in support of the charge to be incredible. The first witness, the minor, was convicted of a *crimen falsi*, i.e. receiving stolen property (firearms) and burglary, in February, 2008 (N.T. 32-39). (Licensee's Exhibit No. L-1)

The Bureau's second witness acknowledged that she lied when she endorsed a written statement prepared on August 25, 2010. While on the witness stand, the witness admitted her written statement contained a description of the bartender, who allegedly served the minor, which was false. The witness advised that she read the minor's written statement in advance of preparing hers so that the two would conform. (N.T. 59-60; Judge's Exhibit No. J-2)

I further accord significant weight to the bartender's testimony who denied serving anyone under age on the evening in question. I have no reason to disbelieve that witness, whose memory of the night in question was solidified with the Bureau's second witness. That witness lawfully purchased beer on prior occasions at the licensed premises. Furthermore, while the statements of the Bureau's two witnesses agree on the bartender's description, the bartender does not fit that description.

Although I reach this result, I still advise Licensee to elevate its vigilance regarding sales to minors. It may very well be that the minor did receive alcoholic beverages at the licensed premises precisely as charged. Candidly, had I followed my visceral reaction, I would have so concluded and penalized Licensee accordingly.

As an Administrative Law Judge, I may not substitute intuition for proof. Having concluded the Bureau's two witnesses were so untrustworthy, as an Administrative Law Judge, I could not, in good conscience, sustain the charge. It is much like the dilemma facing a jury in a criminal matter. Even though the jury may believe the defendant committed the crime, the jury must still conclude the defendant is not guilty.

As I remarked at the hearing, I applaud and support the Bureau's efforts to collect all evidence relevant to an investigation that may be reasonably acquired. It is my continuing hope that such efforts are consistently expanded to include exculpatory evidence rather than focusing on those facts which are solely inculpatory. Had that approach been fully taken here, I am quite comfortable in concluding the Bureau would have interviewed the second witness prior to the conclusion of the investigation rather than afterwards. After doing so, perhaps the Bureau might have chosen not to invest the time in this case.

Once the Bureau transmits the so called "Thirty Days Letter," it is virtually inevitable that a citation will follow. Consequently, any attempt to gather information after the Bureau closes an investigation cannot be considered a true investigative endeavor.

Any information gleaned at that point must be viewed as having been gathered in contemplation of litigation. Evidence gathered to support litigation is necessarily suspect. I am not suggesting such evidence ought not ever to be believed. Rather, doses of prudence, caution, and skepticism are necessary ingredients when evaluating any evidence collected for purposes of litigation.

ORDER:

NOW THEREFORE, it is ordered that Citation No. 10-1203, issued against The New Holland Pub, Inc., t/a The Pub, is DISMISSED.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 11TH day of March, 2011.

A handwritten signature in cursive script, reading "Felix Thau", written over a horizontal line.

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.**