

Mailing Date: FEB 08 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1238
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-409347
v.	:	
	:	LID - 28424
MCCARTY'S FINISH LINE, INC.	:	
T/A TAYLOR'S BAR AND GRILL	:	
6021 STATE RT. 42	:	
UNITYVILLE, PA 17774-9000	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. R-AP-SS-10961	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 17, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MCCARTY'S FINISH LINE, INC., License Number R-AP-SS-10961 (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 March 18, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated male patron.

The investigation which gave rise to the citation began on March 10, 2010 and was completed on May 26, 2010; and notice of the violation was sent to Licensee by Certified Mail on May 26, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 16, 2011 in the Pennsylvania Department of Agriculture, 2130 County Farms Road, Montoursville, 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, 6021 State Rt. 42, Unityville, PA 17774-9000 by certified mail on September 29, 2011. The notice set forth the date and time of the hearing as November 16, 2011 at 1:00 pm, and the place of hearing as PA Dept. of Agriculture, 2130 County Farms Road, Montoursville, PA 17754-9685.

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. On March 18, 2010, an officer of the Bureau entered the licensed premises in an undercover capacity (N.T. 7).
2. Upon entry the officer observed approximately 20 patrons being served by two bartenders (N.T. 7).
3. The officer took a seat at the bar. His attention was drawn to a patron seated approximately six to eight feet from him who was slouched over the bar. His eyes were drooped and glassy. When he wasn't slouched over the bar, he was using the bar for balance. He seemed to have a difficult time keeping his balance on the barstool. He had a straight walled highball-type glass with a dark liquid in it with ice and a mixing straw (N.T. 8).
4. The officer observed that when the patron moved to pick up the drink or do other things he had very deliberate movements. He seemed to put a lot of concentration into sitting up and reaching out for his glass and getting it to his mouth (N.T. 8-9).
5. At 10:55 p.m., one of the bartenders served the patron a shot of clear liquor poured from a bottle from the liquor section of the bar. It resembled vodka or possibly tequila. The shot was served with a lemon (N.T. 9).
6. The patron squeezed a few drops of the lemon into the shot and then drank it (N.T. 9-10).
7. After the patron drank the shot his movements seemed to become more exaggerated. He had a harder time keeping his balance on the barstool and his eyes were drooped and glassy (N.T. 10).
8. At approximately 11:00 p.m. the patron, while reaching for his glass, knocked over the original mixed drink he had in front of him and it spilled all over the bar. The bartender came and cleaned up the spilled drink and wiped the ice and liquid off the bar (N.T. 10).

9. The bartender came back at 11:10 p.m. and served the patron and his friends another shot of the same clear liquor with lemon. The patron drank it in the same manner in which he had drunk the first shot (N.T. 10-11).

CONCLUSION OF LAW:

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

PRIOR RECORD:

Licensee has been licensed since October 18, 1991, and has had eight prior violations:

Citation No. 04-0667. Fine \$300.00.

1. Issued worthless checks in payment for malt or brewed beverages. December 9, 10 and 12, 2003.
2. Operated the licensed establishment without a valid health permit or license. December 5, 2003, January 2, 30 and February 9, 2004.

Citation No. 04-1470. Fine \$250.00.

1. Used loudspeakers or devices whereby music could be heard outside. July, 31, 2004.

Citation No. 07-2899. Fine \$1,750.00 and RAMP training mandated.

1. Sales to a visibly intoxicated person. August 11, 2007.
2. Issued worthless checks in payment for malt or brewed beverages. June 15 and 22, 2007.

Citation No. 08-1445X. Fine \$300.00.

1. Issued worthless checks in payment for malt or brewed beverages. April 25, 2008.

Citation No. 08-1755X. Fine \$400.00.

1. Issued worthless checks in payment for malt or brewed beverages. June 13, 2008.

Citation No. 09-0095. Fine \$1,750.00. Fine not paid and license suspended three days and until find paid.

1. Issued worthless checks in payment for malt or brewed beverages. September 26 and October 31, 2008.
2. Sales on Sunday between 2:00 a.m. and 11:00 a.m. October 12, 2008.

Citation No. 09-2302X. Fine \$600.00. Fine not paid and license suspended two days and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. August 15, 2009.

Citation No. 10-0466X. Fine \$600.00. Fine not paid and license suspended two days and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. December 11, 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 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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$2,000.00, a one day suspension and RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee MCCARTY'S FINISH LINE, 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.

IT IS FURTHER ORDERED that Licensee's liquor license (including all permits and Licensee Discount Card) License No. R-AP-SS-10961 be suspended for a period of one day **BEGINNING** at 7:00 a.m. on Monday, April 2, 2012 and **ENDING** at 7:00 a.m. on Tuesday, April 3, 2012.

Licensee is directed on April 2, 2012 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 April 3, 2012 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 is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such Certification is issued.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) of the liquor Code [47 P.S. §4-471(d)].

Jurisdiction is retained.

Dated this 3RD day of February, 2012.



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.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

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. 10-1238
McCarty's Finish Line, Inc.