

Mailing Date: MAR 23 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1569
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-414958
v.	:	
	:	LID - 61286
KILDARES SCRANTON, INC.	:	
T/A KILDARES IRISH PUB	:	
119 JEFFERSON AVE.	:	
SCRANTON, PA 18503-1701	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. R-AP-SS-16304	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Craig A. Strong, Esquire
LICENSEE: Edward B. McHugh, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 4, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Kildares Scranton, Inc., t/a Kildares Irish Pub (Licensee), License Number R-AP-SS-16304.

The citation¹ charges Licensee with a violation of Sections 406(a)(3) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(3) and §4-493(16)]. The charge is that on June 27, 2010, Licensee, by servants, agents or employees, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 A.M. and 11:00 A.M.

An evidentiary hearing was conducted on February 10, 2011 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

1. Commonwealth Exhibit No. C-2, N.T. 8.

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 June 23, 2010 and completed it on July 1, 2010. (Commonwealth Exhibit No. C-1, N.T. 8)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on July 12, 2010. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)
3. On Sunday, June 27, 2010, a Bureau Enforcement Officer conducted a surveillance of the premises starting at approximately 10:00 a.m. At approximately 10:20 a.m., the Officer noticed an individual entering the premises. The Officer entered the premises at 10:25 a.m. (N.T. 8-10)
4. There were two waitresses. The Officer asked if the premises was open. The response was that it was. The Officer walked to the bar. There were four patrons seated at the bar. One patron was eating breakfast while a second patron was drinking a draft beer. At 10:30 a.m., the Officer ordered a beer which was served to him by a bartender. At approximately 10:45 a.m., the patron who had been consuming a beer ordered a draft beer. Another individual ordered a cider with alcohol in it called "Magners." The Officer departed the premises at 11:00 a.m. (N.T. 10-14)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since March 10, 2009, and has had three prior violations (Commonwealth Exhibit No. C-3):

Adjudication No. 09-1630. Fine \$1,000.00.
Sales on Sunday between 2:00 A.M. and 11:00 A.M.
June 7, 2009.

Adjudication No. 09-1888. Fine \$50.00.

Failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions on the license. June 9 through July 15, 2009.

Adjudication No. 10-0338. Fine \$250.00.

Sold and/or served an unlimited or indefinite amount of alcoholic beverages. February 7, 2010.

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.

I impose a \$1,500.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,500.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 9TH day of March, 2011.



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.

Detach Here and Return 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.** Please make your 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

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KILDARES SCRANTON, INC.