

Mailing Date: JUL 13 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1593
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-413974
v.	:	
	:	LID - 59941
13 S. MAIN ENTERPRISES, INC.	:	
13 S. MAIN ST.	:	
MARYSVILLE, PA 17053-1809	:	
	:	
	:	
	:	
PERRY COUNTY	:	
LICENSE NO. R-AP-SS-16411	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL BALLARON  
LICENSEE: STEVE C. NICHOLAS, ESQUIRE**

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on August 5, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 13 S. MAIN ENTERPRISES, INC., License Number R-AP-SS-16411 (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 May 30, 2010, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated female patron.

The investigation which gave rise to the citation began on May 30, 2010 and was completed on July 19, 2010; and notice of the violation was sent to Licensee by Certified Mail on July 21, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on May 11, 2011 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:

1. On May 30, 2010 at 10:10 p.m., an officer of the Bureau entered the licensed premises and went into the inside bar. She continued out to a large deck area where she observed approximately 50 patrons. There was one male bartender behind a small bar (N.T. 7).
2. The officer took a seat at the outside bar counter (N.T. 7).
3. The officer's attention was drawn to a female patron who was stumbling and staggering on the deck. She was wearing a cardboard crown on her head. The officer initially thought that she was wearing high heels and having trouble walking on the deck. However, she observed a little more and could see that the female patron was wearing flat sandals (N.T. 7-8).
4. The officer observed the female patron dancing wildly. She was bumping into people and falling into people's tables. She had a friend with her who was guiding her through the crowd and the tables. Her friend said, "It's my friend Nikki's birthday. She's drunk. Excuse her but it's her birthday and she's drunk." (N.T. 8).
5. There was a performer on the deck playing a guitar. He started playing some songs, and Nikki was dancing whether he was playing or not. She was boisterous and excited. She interfered with his performance to the extent that he had to stop several times (N.T. 8-9).
6. The officer observed that Nikki had a 16-ounce glass of draft beer which was about half full. As she was dancing and moving around, the beer was sloshing all over and spilling (N.T. 9).
7. Eventually Nikki came over to where the officer was sitting. She was babbling incoherently and was very exuberant and happy (N.T. 9).
8. Nikki saw Mr. Giannaris, principal of Licensee corporation leaning against the deck near the bar. Nikki recognized him and squealed and ran over to him giving him a hug and wrapping her arms around his neck. As she did so, the beer that she had fell to the deck and broke (N.T. 9-10).
9. When the beer glass broke, Nikki became embarrassed. She screamed and covered her eyes and ran off staggering with her friend chasing after her (N.T. 10).
10. About 10:40 p.m., Nikki began yelling and screaming and dancing. This occurred even when there was no music playing. Again people were saying, "Oh it's her birthday. She's a little drunk." (N.T. 10).

11. At about 10:45 p.m. Nikki and her friend came to the service area of the bar. Nikki attempted to order drinks but she was babbling incoherently and slapping her hands on the bar and laughing and giggling. Her friend finally said that they wanted a couple of “baby cherry bombs” and then a Coors Light (N.T. 11).

12. The bartender made up two shots consisting of vodka and Red Bull energy drink (N.T. 10-11).

13. Nikki and her friend picked up the shots, screamed before they drank them then drank them together and screamed again afterwards (N.T. 11-12).

14. After drinking the shots, Nikki started to go off towards the table where her friends were. Her friend obtained the beer that had been ordered. Nikki was bumping into tables. She was stopping at people’s tables and drinking whatever was there. She finally went back to the table where two young men were sitting (N.T. 12).

15. Nikki’s friend put the beer that had been obtained from the bartender on the table, and Nikki drank from the beer. She also drank from other drinks at the table.

16. Nikki started to become heavy and sluggish, and her friends helped her into a vehicle and took her away from the premises (N.T. 13-15).

CONCLUSION OF LAW:

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

DISCUSSION:

The record clearly demonstrates that the bartender at the outside bar on the licensed premises served two shots of vodka and Red Bull energy drink to a patron who showed clear signs of intoxication. He also served a beer which was part of the order. I therefore, have no problem in concluding that the Bureau has met its burden and the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since April 17, 2008, and has had one prior violation:

Citation No. 09-1892. Fine \$50.00.

1. Permitted smoking in a public place where smoking was prohibited. June 4, 11 and July 5, 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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee 13 SOUTH MAIN ENTERPRISES, INC., pay a fine of \$1,250.00 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 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](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto: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 6<sup>TH</sup> day of July, 2011.



Daniel T. Flaherty, Jr., J.

an

**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'S ORDER, 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. 10-1593  
13 South Main Enterprises, Inc.