

Mailing Date: NOV 07 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1808
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-411253
v.	:	
	:	LID - 44129
WOODEN SPOON INN, INC.	:	
T/A WOODEN SPOON INN	:	
HCR 71, PO BOX 161	:	
HUSTONTOWN, PA 17229-9402	:	
	:	
	:	
HUNTINGDON COUNTY	:	
LICENSE NO. R-AP-19940	:	

BEFORE JUDGE THAU
BUREAU COUNSEL VARGO
LICENSEE: JEFFERY SHOPE, PRO SE
MARY S. MCMULLEN, PRO SE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 3, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against WOODEN SPOON INN, INC., License Number R-AP-19940 (Licensee).

The citation contains three counts.

The first count charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471]. The charge is that on May 8, 2010, Licensee's corporate president was visibly intoxicated on the licensed premises.

The second count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)]. The charge is that on May 8, June 19, 20 and July 17, 2010, Licensee, by its servants, agents or employees, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The third count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on May 8 and June 20, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to two visibly intoxicated male patrons.

An evidentiary hearing was conducted on July 13, 2011 in the Hampton Inn, Altoona, Pennsylvania.

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 11, 2010 and completed it on July 18, 2010 (N.T. 48-49).

2. The Bureau sent a notice of alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on August 12, 2010. The notice alleged violations as charged in the citation (Commonwealth Exhibit No. C-1, N.T. 47).

Count No. 1

3. On May 8, 2010, a Bureau Enforcement Officer entered the premises. Licensee's sole corporate officer, Mr. S., was providing karaoke entertainment. He spoke to the Officer. He had difficulty walking. He swayed and stumbled. Mr. S. told the Officer that he was drinking whiskey from a glass which the Officer determined was approximately equivalent to three shots. Mr. S.'s eyes were extremely bloodshot and glassy. He held onto the Officer's shoulder to maintain his balance. Mr. S. received three additional services of a full glass of whiskey as well as several bottles of beer (N.T. 50-55).

Count No. 2

4. On May 8, 2010, prior to entering the premises and determining that karaoke was being provided, the Officer heard the amplified music escaping the premises as far away as 225 feet (N.T. 49-50).

5. On June 20, 2010, the Officer again heard amplified music escaping from the premises as far away as 200 feet. The source of the amplified music was karaoke provided by Mr. S. (N.T. 66-67).

6. On July 17, 2010, the Officer heard amplified music escaping the premises as far away as 175 feet. The source of the music was karaoke entertainment occurring inside the premises (N.T. 72-74).

Count No. 3

7. During the Officer's visit of May 8, 2010 he noticed a patron who was visibly intoxicated. The patron was loud, yelling obscenities. He was swaying and stumbling as he negotiated his way through the premises, nearly falling down twice. At 1:30 a.m., the barmaid served the visibly intoxicated patron beer (N.T. 63-65).

8. During the undercover visit of June 20, 2010, the Officer noticed a patron who was bumping into other customers. As he walked over to the bar, the customer held the bar to maintain his balance. He had insufficient motor skills to put one foot in front of the other without difficulty. He bumped into the Officer. He held onto the Officer's shoulder. He placed a bottle on the top bar counter and knocked it over. Shortly thereafter the bartender served the visibly intoxicated customer another beer (N.T. 67-69).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Count No. 1, 2 and 3 of the citation are **sustained** as charged.

DISCUSSION:

During the hearing, Mr. S. and I engaged in discussion. It became clear he had very little understanding of Licensee's prior Adjudication history and of the current matter. His psychological and physical condition has severely deteriorated. He has coronary obstructive pulmonary disease and he smokes. He entered an alcohol detoxification program which lasted for one week. He did not follow up with any further rehabilitation.

Mr. S. is also being treated for high blood pressure, hypertension, depression and anxiety. He suffers from dizzy spells. He has a skin condition due to poor venous circulation in his legs (N.T. 14-19, 28-30, 33-38, 81-83 and Exhibits L-1 and L-2).

Although Mr. S. asserted that: "Everything I've heard here today concerning me and my bar has been embellished way out of proportion," Mr. S. did admit that he drank a few beers that evening. He only used the whiskey to gargle. Not for a fraction of a heartbeat do I believe Mr. S. when he denies drinking whiskey that evening.

In addition to that outright lie, the conclusion is overwhelming that Mr. S. refuses to acknowledge he has a severe alcohol addiction. He hardly needed to reveal his mental and physical disabilities as they were manifested during the hearing. His demeanor and behavior, when combined with all his illnesses, render him incapable of operating the business.

At the hearing, Mr. S was assisted by Ms. M. She and her husband are purchasing the license. As the hearing progressed, it was obvious that Ms. M. not only had a business arrangement with Mr. S. but was also a friend. She provided assistance to Mr. S. during the hearing. I became impressed with her knowledge of the business and her personal commitment to him. Were it not for this purchase, I would have imposed more severe sanctions.

PRIOR RECORD:

Licensee has been licensed since May 10, 1999, and has had three prior violations:

Adjudication No. 99-2174. Fine \$700.00.
Sales to a visibly intoxicated person.

Adjudication No. 00-0920. Fine \$250.00.
Your corporate president consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

Adjudication No. 06-1524. Fine \$1,250.00 and RAMP training mandated.
Sales to a minor. February 26, 2006.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Count Nos. 1 and 2 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count No. 3 of this case.

I adopt the jointly recommended penalty of a 22 days suspension and continuing thereafter until Licensee removes Mr. S. as manager.

Count 1 – 10 days suspension and continuing thereafter until Licensee submits written certification verifying that a change of manager form has been submitted and approved by the Board removing Mr. S. as manager and appointing a new manager.

Count 2 – 5 days suspension

Count 3 – 7 days suspension and RAMP training

ORDER

THEREFORE, IT IS HEREBY ORDERED that the restaurant liquor license (including all permits) of WOODEN SPOON INN, INC., License No. R-AP-19940 be suspended for a period of twenty-two (22) day(s) **BEGINNING** at 7:00 a.m. on Monday, January 9, 2012, and further that said license remain suspended until: (1) Licensee has submitted written certification verifying that a change of manager form was submitted and approved by the Board removing Mr. S. as manager and appointing a new manager; and (2) said document has been approved and the suspension terminated by further Order.

Licensee is directed on January 9, 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 MAY NOT RESUME OPERATION OF THE LICENSED PREMISES UNTIL FURTHER ORDER BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE.

Jurisdiction is retained.

Dated this 31ST day of October, 2011.



Felix Thau, A.L.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'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.

CERTIFICATION

_____ hereby certifies that he is the _____ of Licensee, t/a
Wooden Spoon Inn, Inc.; and

A change of manager form has been submitted to the Liquor Control Board removing Mr. S. as manager. (Copy attached).

I/We, the above Licensee(s) [or authorized officer(s) thereof], under penalty of law [18 Pa.C.S. §4904], relating to unsworn falsification to authorities] acknowledge that I/We are signing and executing this document as the authorized act and deed of the Licensee. I/We certify that the foregoing is true and correct.

SIGNATURE

DATE

Original to be sent to: Office of Administrative Law Judge, Pennsylvania Liquor Control Board, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg PA 17110-9661.

One copy of certification to be sent to: Nadia Vargo, Assistant Counsel, Bureau of Liquor Control Enforcement, Pennsylvania State Police, 313 Mt. Nebo Road, Pittsburgh, Pennsylvania 15237-1305.