

Mailing Date: JUL 22 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2038
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-415159
v.	:	
	:	LID - 36095
NEW K BAR, INC.	:	
523 E. THIRD ST.	:	
WILLIAMSPORT, PA 17701-5316	:	
	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. H-AP-SS-EHF-3027	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: DONALD L. HAMILTON, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 30, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against NEW K BAR, INC., License Number H-AP-SS-EHF-3027 (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 August 21, 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 June 25, 2010 and was completed on September 12, 2010; and notice of the violation was sent to Licensee by Certified Mail on September 15, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on May 5, 2011 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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 August 21, 2010 at 12:40 a.m., an officer of the Bureau entered the licensed premises. He observed approximately 75 patrons present (N.T. 12-13). As the officer walked into the premises he walked past a patron who appeared startled as the officer passed him. The patron had bloodshot, glassy eyes and he staggered somewhat (N.T. 13).

2. The officer noted that the patron was in possession of a 12-ounce mug which contained a dark liquid and some ice (N.T. 14).

3. The officer found a spot at the bar and ordered his beverage. When he turned around, the officer observed the aforementioned patron standing on the dance floor. People on the dance floor were bumping into this patron, and every time he was bumped, he got a surprised look on his face. When he wasn't being bumped he was swaying back and forth and was very unsteady on his feet. After being bumped a few times, he walked 20-25 feet through the premises over to the pool table area. He had a severe stagger to his gait. On several occasions, he had to reach down and put his hand on a chair or a table to walk through (N.T. 14-15).

4. When the patron arrived at the pool table area the first time, he was standing in the way of the pool players, and one of the players bumped him with his stick. The player said something to him, and the patron in question walked back to the same table area using tables and chairs to keep himself from falling. He stood right in the middle of the dance floor again and again was being bumped by the dancers (N.T. 15).

5. The aforementioned player after being bumped on the dance floor again walked back near the pool table staggering through holding onto chairs and tables. He again got bumped by a pool player with a pool stick and walked back to the dance floor yet again (N.T. 15-16).

6. While standing on the dance floor, the patron brought the mug he was carrying to his face. The rim of the mug came under his chin. He put the mug back down and took a look at it, and then brought it back up and hit it off his nose. He then brought the mug back down and looked at it again. He steadily brought it up to his lips by bending his head down to the mug as much as bringing the mug up to his face. Once he got the mug to his lips, instead of tipping the glass, he tipped his whole body backwards, keeping the mug in the same position. When he did this he almost fell completely over on his back (N.T. 16).

7. The officer observed the aforementioned patron attempt to talk to a female patron on the dance floor. He leaned over and made a noise into her ear. He observed the female patron say something to him which seemed to indicate that she didn't understand what he said. The patron leaned in again and made a grunting noise and again the female patron had a look on her face of not understanding. She asked him to repeat it. He leaned in again and made the same grunting noise. The female patron looked at him at this point, gave a smile and nodded her head and said, "Yeah" and walked away from him. During the time he was talking to the female patron, the male patron was either swaying or leaning on something (N.T. 17-18).

8. The officer observed the patron at one point walking into his view with a lit cigarette. He came over to an ashtray which was right next to the officer on the bar. He flicked the ashes and missed the ashtray. He had to grab hold of the bar with his left hand to keep from falling over. He walked away and later came back to flick the ashes in the ashtray. He started falling forward and used his left hand to catch himself. He then attempted to stamp out the cigarette, but he was unable to do so. It kept burning in the ashtray (N.T. 18).

9. The aforementioned patron seemed to be with a male patron and a female patron who seemed to be keeping an eye on him (N.T. 18).

10. At 1:00 a.m. the patron brought his mug to the bar and set it on the bar. The bartender took the mug, put some ice in it, put two to three ounces of Captain Morgan Rum in the mug and filled the rest of it with Coke. The patron in question kept reaching in his right front pocket and pulling his hand out without anything in it. Apparently he was looking for money, but the only pocket he looked in was his right front pocket. The male patron who appeared to be with the patron in question ordered a beer from the bartender who was standing in front of the patron in question. The patron who ordered the beer eventually paid for the drink of the patron in question which was rung up on the cash register for \$4.00 (N.T. 19-20).

CONCLUSION OF LAW:

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

DISCUSSION:

The record in this case clearly establishes that the bartender on the licensed premises on the date in question served two to three ounces of rum plus Coca Cola to a patron who was showing clear and unmistakable signs of intoxication. For that reason I conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since May 15, 1995, and has had three prior violations:

Citation No. 05-0145. Fine \$1,250.00.

1. Sales between 2:00 a.m. and 7:00 a.m. December 11, 2004.

Citation No. 06-0121C. Fine \$1,250.00.

1. Sales to a minor. December 28, 2005.

Citation No. 08-1894. Fine \$1,250.00, 1 day suspension and RAMP training mandated.

1. Sales to a visibly intoxicated person. July 19, 2008.

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.

This office takes notice that Licensee became RAMP certified effective January 10, 2011.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,750.00 and Licensee must remain RAMP compliant.

ORDER

THEREFORE, it is hereby ordered that Licensee NEW K BAR, INC., pay a fine of \$1,750.00 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 must remain in compliance for a period of one year from the mailing date of the Order.

Jurisdiction is retained.

Dated this 15TH day of July, 2011.



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'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. 10-2038
New K Bar, Inc.