

Mailing Date: JUNE 8 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2270
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W08-419995
	:	
BPON INC	:	
T/A THE BORO BAR	:	LID-51780
117 MEADVILLE ST	:	
EDINBORO PA 16412-2507	:	
	:	
	:	
ERIE COUNTY	:	
LICENSE NO. R-AP-19993	:	

**ADJUDICATION**

**JUDGE:** ROBERT F. SKWARYK

APPEARANCES:

**BUREAU COUNSEL:** Emily L. Gustave, Esq.

**LICENSEE COUNSEL:** Pro Se

BACKGROUND:

This proceeding arises out of a citation that was issued on October 20, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against BPON, Inc., T/A The Boro Bar, License Number R-AP-19993 (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 September 24, 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 (1) visibly intoxicated male patron.

The investigation which gave rise to the citation began on September 24, 2010 and was completed on September 24, 2010. The notice of violation letter was mailed to Licensee on October 8, 2010.

An evidentiary hearing was held on this matter on April 27, 2011, in Erie, Pennsylvania.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is located in Erie County, Pennsylvania and holds Restaurant Liquor license number R-AP-19993. (N.T. 4).

2. On Friday, September 24, 2010, at 10:00 p.m., two enforcement officers arrived at the licensed premises in an undercover capacity, had their ID's checked by a doorman and found three bartenders rendering service of alcoholic beverages to a crowded bar due to Edinboro College's homecoming weekend. (N.T. 8-9, 16).

3. The officers observed a male patron with extremely slurred speech, who put his arms around one officer and another patron, and appeared to be intoxicated. (N.T. 10, 17).

4. The intoxicated patron had a plastic glass with ice and made loud gestures to the bartenders to get his cup refilled. (N.T. 11, 17).

5. The intoxicated patron was unbalanced, steadied himself on the officer, had bloodshot, glassy eyes, a heavy smell of alcohol on his breath, and incomprehensible speech as he shouted over the crowd noise. (N.T. 11-12).

6. At approximately 11:00 p.m., the intoxicated patron staggered and bumped into patrons as he made his way to the other end of the bar, where the other officer was standing, and held his glass up for the female bartender to refill. (N.T. 13-15, 17).

7. The female bartender refilled his glass with gin and tonic with lime, and handed it back to him. (N.T. 14-17).

8. The intoxicated patron had difficulty getting money from his wallet, then handed a five dollar bill to the barmaid, which she rang up on the cash register. (N.T. 15).

9. At 11:20 p.m., the two officers departed the licensed premises. (N.T. 15).

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

At the hearing held on the matter, the enforcement officers testified that they visited the licensed premises on Friday, September 24, 2010, from 10:00 p.m., to 11:20 p.m., and found it very crowded due to Edinboro College's homecoming weekend. For ten minutes, they observed a visibly intoxicated male patron who had bloodshot, glassy eyes, loud, slurred speech, and staggered when walking as he tried to get his glass refilled from the bartenders. He stumbled to the other end of the bar where he

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gained the female bartender's attention and she refilled his glass with gin and tonic with lime. He had difficulty finding a five dollar bill in his wallet, which he gave to the barmaid, and she rang up the sale.

Licensee's current owner and his father testified as to their policy against serving alcohol to intoxicated patrons, but agreed that the intoxicated patron may have been served due to the homecoming crowd in their bar. They also testified as having received R.A.M.P. training but not R.A.M.P. certification.

The female bartender testified that she was R.A.M.P. certified and produced her training card. She did not remember serving the intoxicated patron who may have been a regular. She would not have served him had she seen his intoxicated behavior.

I find the testimony of the two officers to be credible. As such, the citation is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since November 24, 2003, and has no prior violations.

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 a violation of the type found in this case.

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$1,250.00 and mandatory R.A.M.P. training will be imposed as the penalty in this case.<sup>1</sup>

ORDER:

THEREFORE, it is hereby ORDERED that BPON, Inc., T/A The Boro Bar, 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, BPON, Inc., T/A The Boro Bar, shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcoholic Management in the following manner. Licensee is directed to initiate contact with the Bureau of Alcohol Education (Telephone 1-866-275-8237; Web Site: *www.lcb.state.pa.us*) within 30 days of the

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<sup>1</sup>[47 P.S. §4-471(d)], effective June 12, 2006.

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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, and for that purpose jurisdiction is retained. Failure to comply may also constitute ground for issuance of a new citation as authorized by 47 P.S. §4-471(e).

**JURISDICTION IS RETAINED.**

Dated this 23<sup>RD</sup> day of MAY, 2011.



Robert F. Skwaryk, J.

**MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.**

**IF FILING AN APPEAL, IT MUST BE RECEIVED WITHIN 30 DAYS OF THE MAILING DATE OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, MAIL TO OR CONTACT THE PA. LIQUOR CONTROL BOARD, OFFICE OF CHIEF COUNSEL, ROOM 401, NORTHWEST OFFICE BLDG., HARRISBURG, PA 17124-0001, PHONE NO. 717-783-9454.**

Detach Here and Return Stub with Payment

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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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