

Mailing Date: FEB 15 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2478
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-417965
v.	:	
	:	LID - 62450
E & G VENTURES, LLC	:	
T/A MOSCH'S TAVERN	:	
762 N. MAIN ST.	:	
COUDERSPORT, PA 16915-1768	:	
	:	
	:	
POTTER COUNTY	:	
LICENSE NO. R-AP-SS-EHF-15400	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: GERALD L. GOLDEN, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 2, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against E & G VENTURES, LLC, License Number R-AP-SS-EHF-15400 (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 17 and 18, 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 female patron.

The investigation which gave rise to the citation began on August 22, 2010 and was completed on November 1, 2010; and notice of the violation was sent to Licensee by Certified Mail on November 4, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 16, 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 September 17, 2010, two officers of the Bureau entered the licensed premises at about 10:45 p.m. (N.T. 9-10).

2. Upon entry the officers observed about 50 patrons being served by two female bartenders heard to be called Peggy and Karen (N.T. 10).

3. The officers found two seats together in the middle of the bar. Upon being seated one of the officers found himself next to a female patron who was wearing a hat that said, "Native Pride" on it. It had an emblem on it of an American Indian. She was wearing a Cincinnati Bengals shirt with "R. Johnson" and No. 32 on it (N.T. 10-11).

4. When the officer first observed the aforementioned female patron she had a 12 ounce bottle of Coors Light beer in front of her and was consuming from it. During the next 30 minutes this patron consumed two shots of a drink called a Jagerbomb consisting of Jagermeister liquor and an energy drink. She was then served a second 12 ounce bottle of Coors Light beer (N.T. 11).

5. At 11:25 p.m. the patron ordered another Jagerbomb with Jagermeister liquor in it. The barmaid Peggy told her, "no." When a male patron seated to the left of this individual asked why the barmaid pointed to a sign directly behind her that was provided by the Liquor Control Board with a big circle and a line through it for VIP's stating they wouldn't serve anybody who was visibly intoxicated (N.T. 11-12).

6. The officer began paying more attention to this patron. At 11:25 p.m. he noticed she had difficulty lighting a cigarette. She lit it down from the end, and it flamed up for a second and went out. She continued to attempt to smoke it. Every time she flicked the ashes at the ashtray they spread all over the bar (N.T. 12).

7. Because she wasn't allowed to purchase shots from the barmaid, the patron got up and walked over to the end of the bar. When she walked she had a stagger to her gait. She talked to a female patron over at the end of the bar and then came back. Her gait as she walked back was also staggered. As she tried to sit down she had difficulty getting into her chair and she actually fell into the officer. She apologized, and when she did so her speech was slurred. It took her three attempts to get onto her barstool. When she did she caught her right thigh on the barstool and then had to shimmy her way to center herself on the stool (N.T. 12-13).

8. By this time the bartender Peggy had left from behind the bar and was seated on the patron's side of the bar. The bartender Karen served the female patron that the patron in question had been talking to a Jagerbomb with Jagermeister liquor in it. That person then walked down the bar to the female in question and gave her the drink. The patron then drank it and looked around. She put her fingers to her lips and made a shh sound. She was trying to hide the little cup that the Jagerbomb was served in so that the bartender didn't notice that she was being served a shot (N.T. 13).

9. At 11:35 p.m., the patron in question was served a bottle of Coors Light beer. The patron in question ordered it herself, and it was served directly to her. The male patron to her left paid for the drink (N.T. 14).

10. At 11:50 p.m., the bartender Karen served the patron in question another Coors Light beer. The beer was ordered by the patron in question and was served directly to her. The drink was paid for by the male patron who had paid for the previous drink (N.T. 15-16).

CONCLUSION OF LAW:

1. The charge in the citation is **sustained** as to September 17, 2011.
2. The charge in the citation is **dismissed** as to September 18, 2011 as there is no evidence of a violation on that date.

DISCUSSION:

The record discloses that the patron in question was served at least one Jagerbomb and two bottles of beer directly by bartenders on the licensed premises while she was exhibiting signs of intoxication. Consequently, I conclude that the charge in the citation is sustained as to September 17, 2011.

PRIOR RECORD:

Licensee has been licensed since December 1, 2009, and has had one prior violation:

Citation No. 10-0800. Fine \$1,250.00 and RAMP training mandated.

1. Sales to a visibly intoxicated person. March 20, 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.

This office takes notice that Licensee became RAMP certified October 25, 2010.

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 E & G VENTURES, LLC, 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 8TH day of February, 2012.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", is written over a horizontal line.

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. 10-2478
E & G Ventures, LLC