

Mailing Date: JAN 04 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2605
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-421089
v.	:	
	:	LID - 59291
DENIGHT ENTERPRISES, LLC	:	
T/A PARADISE BAR AND GRILLE	:	
718-720 ALTER ST.	:	
HAZLETON, PA 18201-3133	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. R-AP-SS-4784	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL STRONG
LICENSEE: JASON MISTO, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 13, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against DENIGHT ENTERPRISES, LLC, License Number R-AP-SS-4784 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on October 31, 2010, Licensee, by its servants, agents or employes, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on October 31, 2010, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The investigation which gave rise to the citation began on October 20, 2010 and was completed on November 9, 2010; and notice of the violation was sent to Licensee by Certified Mail on November 16, 2010. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 25, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, 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:

COUNTS 1 AND 2

1. On October 31, 2010 at 12:30 a.m., an officer of the Bureau entered the licensed premises (N.T. 9).
2. Upon entry the officer observed that there were between 50 and 55 people in the licensed premises and there was a DJ playing music (N.T. 9).
3. The officer remained on the premises and, at 1:58 a.m. last call was given. The last alcoholic beverages were served at 1:53 a.m. (N.T. 9).
4. At 2:20 a.m., the officer was told he had to leave the premises. There were approximately 15 people left inside and the officer left the premises at that time (N.T. 10).
5. Upon exiting the premises the officer went to his car which was parked across the street from the front of the premises where he could observe the front door (N.T. 10).
6. Between 2:20 a.m. and 2:30 a.m. he observed four people leave the licensed premises (N.T. 11).
7. Between 2:30 a.m. and 2:40 a.m. the officer observed four additional people leave the licensed premises (N.T. 11).
8. At 2:40 a.m., the officer approached the licensed premises. As he was standing outside the building, he could hear people talking inside. He went to the back door which he found unlocked and entered through that door (N.T. 11).

9. Upon entry into the building, the officer observed that there were six people seated at the bar. He observed that they had mixed drinks and bottled beer in front of them. Two of these individuals had bottled beer in their hands. He also observed mixed drinks on the bar and a couple of bottles of beer and a draft beer on the bar. The individuals seated at the bar were not cleaning up (N.T. 12).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

DISCUSSION:

Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] prohibits a restaurant licensee from allowing patrons to be present on the licensed premises after 2:30 a.m. Further, that Section prohibits licensees from permitting patrons to have any previously served liquor or malt or brewed beverages in their possession on the licensed premises after that time.

In this case, the officer observed several people seated at the bar, two of which were in possession of bottles of beer. Their presence after 2:30 a.m. and their possession of beer, establishes the two violations charged in this case.

PRIOR RECORD:

Licensee has been licensed since November 20, 2007, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 this case.

Counts 1 and 2 of the citation arise from the same facts and address the same enforcement interests. They will, therefore, be merged for purposes of imposing a penalty.

Under the circumstances of this case, the penalty imposed shall be a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee DENIGHT ENTERPRISES LLC, pay a fine of \$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.

Jurisdiction is retained.

Dated this 20TH day of December, 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. 10-2605
Denight Enterprises, LLC