

Mailing Date: JAN 13 2012

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

| | | |
|-------------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 10-2666 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W04-422235 |
| v. | : | |
| | : | LID - 49989 |
| MIKE'S NEW MOON SALOON INC. | : | |
| T/A MIKE'S NEW MOON SALOON | : | |
| 2059 SAXONBURG BOULEVARD | : | |
| GIBSONIA PA 15044-9805 | : | |
| | : | |
| | : | |
| ALLEGHENY COUNTY | : | |
| LICENSE NO. R-AP-SS-EHF-14497 | : | |

BEFORE: JUDGE RODERICK FRISK

APPEARANCES:

BLCE COUNSEL: Nadia Vargo, Esquire
LICENSEE COUNSEL: Mary Jo Kubisa, Pro Se

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 20, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Mike's New Moon Saloon, Inc., t/a Mike's New Moon Saloon, License Number R-AP-SS-EHF-14497 (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 November 12, 2010, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving alcoholic beverages to one (1) female minor, twenty (20) years of age.

MIKE'S NEW MOON SALOON, INC.

Citation No. 10-2666

An administrative hearing was conducted on November 9, 2011, at Two Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania. The Bureau was represented by Nadia Vargo, Esquire. Licensee was represented by Mary Jo Kubisa, Pro Se.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

1. The Bureau commenced its investigation of Licensee's premises on November 12, 2010, and completed its investigation on November 12, 2010. (Exhibit C-1)

2. The Bureau notified Licensee of the nature of the alleged violation disclosed by its investigation in a letter dated November 19, 2010, which was sent by certified mail and received by Licensee on November 22, 2010. (Exhibit C-1, C-2)

3. The citation was issued on December 20, 2010, and was sent by certified mail and received by Licensee on December 22, 2010. (Exhibits C-3, C-4)

4. On November 12, 2010 at approximately 9:30 p.m., Sharon K entered Licensee's premises with her boyfriend and a second male companion. (N.T. 11)

5. Upon entering, Sharon K and her companions approached the bar at which time Sharon K purchased a Miller Lite beer from a bartender heard to be called "Paula," without question relative to her age. (N.T. 12, 13)

6. During the course of this visit, Sharon K purchased two additional alcoholic beverages consisting of Captain Morgan Rum and coke mixed drinks from bartender "Paula" without question relative to her age. (N.T. 13, 14)

7. Sharon K was not asked for identification or any other proof of age at any time during the course of her visit to Licensee's premises on Nov. 12, 2010. (N.T. 16, 18)

CONCLUSIONS OF LAW:

1. The notice provisions as prescribed by Section 471 of the Liquor Code [47 P.S. §4-471] have been satisfied.

MIKE'S NEW MOON SALOON, INC.

Citation No. 10-2666

2. On November 12, 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) female minor, twenty (20) years of age, in violation of Section 493(1) of the Liquor Code, [47 P.S. §4-493(1)].

DISCUSSION:

Upon thorough review of the testimony and evidence presented, this court concludes that the Bureau has established the violation as charged by a clear preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

PRIOR RECORD:

Licensee has been licensed since October 16, 2002, and has had three (3) prior violations.

Citation No. 05-1141. Fine \$550.00.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (Machines).
April 7, 9, 10, 26, 28, and May 4, 2005.

Citation No. 08-0218C. Fine \$1,250.00 and R.A.M.P. Training mandated.

1. Sales to a minor.
January 11, 2008.

Citation No. 10-0502. Fine \$1,400.00.

1. Sales between 2:00 A.M. and 7:00 A.M.
December 4, 2009.
2. Permitted patrons to possess or remove alcoholic beverages after 2:30 A.M.
December 4, 2009.

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.

MIKE'S NEW MOON SALOON, INC.
Citation No. 10-2666

After due consideration of the circumstances giving rise to the citation and Licensee's status the record discloses that Licensee had a prior violation involving the furnishing, giving and/or sale to a minor at Citation No. 08-0218C.

Therefore, the penalty shall reflect a repeat offense.

Further, Section 471(c) requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of the Liquor Code and/or Crimes Code within a four-year period. The violation in this case represents the third violation of the Liquor Code and/or Crimes Code within a four year period. Therefore, license revocation or suspension must be included as part of the penalty.

Moreover, licensees who have been cited and found to have violated Section 493(1) of the Liquor Code for a second or subsequent offense as it relates to sales to minors or sales to a visibly intoxicated person may be required to comply with the requirements set forth in Section 471(e) of the Liquor Code [47 P.S. §4-471(e)] pertaining to responsible alcohol management (R.A.M.P.)

For the foregoing reasons, a penalty shall be imposed in the amount of \$1,400.00, a one day suspension and R.A.M.P training will be imposed as the penalty in this case.

ORDER:

THEREFORE, it is hereby ordered that Mike's New Moon Saloon, Inc., t/a Mike's New Moon Saloon License Number R-AP-SS-EHF-14497, pay a fine of \$1,400.00 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 Number Licensee's liquor license (including all permits and Licensee Discount Card) License No. R-AP-SS-EHF-14497 be suspended for a period of one (1) days **BEGINNING** at 7:00 a.m. on Monday, February 13, 2012 and **ENDING** at 7:00 a.m. on Tuesday, Tuesday, February 14, 2012.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Section 471.1 of the Liquor Code [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management in the following manner: Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No. 1-866-275-8237; Web Site: www.lcb.state.pa.us) within 30 days of the mailing date of this Adjudication in order to seek assistance in the compliance process. 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.

MIKE'S NEW MOON SALOON, INC.
Citation No. 10-2666

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by Section 471(d) or (e) of the Liquor Code [47 P.S. §4-471(d) or §4-471(e)].

Licensee is directed on Monday, February 13, 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 is authorized on Tuesday, February 14, 2012 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 11TH day of January, 2012.



Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN 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 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.

MIKE'S NEW MOON SALOON, INC.

Citation No. 10-2666

Detach Here and Return Stub with Payment

The fine must be paid by Treasurer's Check, Cashier's Check, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** 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

Citation No. 10-2666

Mike's New Moon Saloon, Inc.