Mailing Date: OCT 13 2011

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	Citation No. 10-2676
	:	Incident No. W05-419030
v.	:	
	:	LID - 20539
HEISTER STREET, INC. T/A DELI/SALOON/INFERNO 101-113 HEISTER ST. & 340-342 E. COLLEGE AVE. PO BOX 81 STATE COLLEGE, PA 16804	:	
CENTRE COUNTY LICENSE NO. R-AP-SS-EHF-19803	:	

BEFORE JUDGE THAU
BUREAU COUNSEL GUSTAVE
LICENSEE: EVAN C. PAPPAS, ESQUIRE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on December 27, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against HEISTER STREET, INC., License Number R-AP-SS-EHF-19803 (Licensee).

The citation charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §493(1)]. The charge is that on October 30, 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.

An evidentiary hearing was conducted on June 28, 2011 at the Hampton Inn in Altoona, Pennsylvania.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on September 9, 2010 and completed it on November 17, 2010 (N.T. 15).

2. The Bureau sent a notice of alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on December 7, 2010. The notice alleged violations as charged in the citation (Commonwealth Exhibit No. C-1, N.T. 15).

3. A Bureau Enforcement Officer arrived at the premises on October 30, 2010 at approximately 9:25 p.m. It was the evening of the Penn State-Michigan football game (N.T. 32-33).

4. After ordering a drink, the Officer stood near the entrance. The football game was shown on television. At 9:55 pm, three men entered the premises. The Officer's attention was drawn to one of the three because that patron was waving his arms and yelling (N.T. 34-35).

5. One of the targeted customer's friends went to the bar. He returned with a pitcher of beer which he gave to the targeted customer. The targeted customer consumed the beer directly from the pitcher. Some of the beer spilled down the front of his shirt while he was drinking. (N.T. 35-38).

6. The Officer attempted to engage the targeted patron in conversation. The Officer noticed the customer's eyes were bloodshot. His speech was slurred as he yelled. The customer ignored the Officer's attempt to engage him in conversation (N.T. 39-40).

7. At 10:42 pm, the customer finished the remaining beer in the pitcher which the officer estimated to be about half full. The targeted customer was presented with a second pitcher of beer by one of his friends (N.T. 42-43).

8. The targeted customer began drinking beer directly from the second pitcher. He did not spill any beer this time (N.T. 44-45).

9. Licensee provides extensive training to its servers to detect and refuse to serve visibly intoxicated patrons (N.T. 111-117).

10. Licensee has been RAMP certified effective December 3, 2009. Licensee has trained 90% of its staff.

11. Licensee's written policy requires its employe to escort any customer believed to be visibly intoxicated off the premises (N.T. 111-117, 122-126, 129-130).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. The charge in the citation is **dismissed**.

DISCUSSION:

The crucial determination is the condition of the targeted customer at the time his companion delivered the second pitcher of beer. Since the customer consumed approximately 20 ounces of beer almost immediately prior to the service in question, that consumption could not have affected the targeted customer's behavior as it had yet to be metabolized. The remaining evidence regarding the targeted customer's drinking, is no more than 20 ounces which the targeted customer consumed earlier in the evening.

I am also confronted with a situation in which the fervor and zeal attendant to a college football game, with rivalry implications, energized a predominantly Penn State fan base to a wide variety of excited behaviors. Given this environment, the relatively short observation interval, and the consumption of no more than 20 ounces of beer prior to service, I cannot accord the Officer's assessment significant weight.

ORDER:

IT IS HEREBY ORDERED that Citation No. 10-2676 be DISMISSED.

Jurisdiction is retained.

Dated this 28TH day of September, 2011.

Felix Thau, A.L.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.