

Mailing Date: FEB 08 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0335
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	Incident No. W01-421990
	:	
8 MANOA INC.	:	
8 N. MANOA RD.	:	LID - 46237
HAVERTOWN TWP.	:	
HAVERTOWN PA 19083-3426	:	
	:	
	:	
DELAWARE COUNTY	:	
LICENSE NO. R-AP-SS-EHF-6816	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

**JAMES E. DAILEY, ESQ.**

FOR THE LICENSEE:

**CHRISTOPHER VANDEVERE  
PRO SE**

**BEFORE: JUDGE WRIGHT**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 1, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 8 Manoa, Inc., License Number R-AP-SS-EHF-6816 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 12, 2011, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Sections 406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16), in that on January 16, 2011, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m.

FINDINGS OF FACT:

1. The Bureau of Enforcement conducted an investigation of the licensed premises which began on November 3, 2010 and was completed on February 12, 2011. A notice of violation letter dated February 15, 2011 was sent to the licensed premises by certified mail, return receipt requested. The mailing was signed as received. A citation dated March 1, 2011 was sent to the licensed premises by certified mail, return receipt requested. That mailing was also signed as received (N.T. 16-17 and Exhibits B-1 and B-2).

2. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises after receiving a complaint from the Haverford Police Department regarding sales to minors (N.T. 7-8).

3. The officer visited the premises on November 5, 2010 as a part of an Age Compliance Detail. The investigation was conducted utilizing an underage buyer and the Licensee was found to be in compliance (N.T. 9-10).

4. The officer made a second visit to the premises on November 20, 2010. He arrived at the premises at approximately 1:15 a.m. accompanied by a second officer from the Bureau of Enforcement. The premises was open and operating on that date. No violations were observed (N.T. 10).

5. On December 19, 2010, two other officers from the Bureau of Enforcement went out as a part of the investigation. No violations were found on that date (N.T. 10-11).

6. The officer visited the premises on January 16, 2011 at 1:00 a.m. accompanied by another officer from the Bureau of Enforcement. The officers entered through the front door. They were keeping time through the use of cell phone service by Sprint. At that time, the premises was open and operating (N.T. 11-12).

7. The officer observed approximately twenty patrons inside and one male bartender tending bar (N.T. 12).

8. Upon entering the premises, the officer ordered two twelve ounce Miller Lite bottles of beer (N.T. 11-12).

9. At 2:10 a.m., the officer ordered two Miller Lite sixteen ounce beers for himself and the other officer. Prior to that, he had observed sales to other patrons (N.T. 12-13).

10. At 2:05 a.m., the officer observed a male patron seated to his right order a shot of Jameson Irish Whiskey. An unknown amount of money was exchanged for the drink. The bartender placed the money in an operating cash register (N.T. 13).

11. At approximately 2:12 a.m., the officer observed a patron order a sixteen ounce draft beer and a shot of liquor. Money was given for the purchases and placed into an operating cash register (N.T. 14).

12. The officers left the premises at 2:25 a.m. The bartender was still behind the bar and patrons were still seated at the end of the bar. The officers remained outside the premises until about 3:00 a.m. The remaining patrons left the premises sometime prior to 2:30 a.m. (N.T. 14).

13. The officers again visited the premises on January 30, 2011. No violations were found (N.T. 15).

14. Mr. Vandevere testified on behalf of the Licensee and indicated that they have a time clock attached to the alarm system and according to the clock, on January 16, 2011, the bartender left the premises at 2:36 a.m. (N.T. 20).

#### CONCLUSIONS OF LAW:

On January 16, 2011, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday between 2:00 a.m. and 11:00 a.m., in violation of Sections 406(a)(3) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(3) and 4-493(16).

#### PRIOR RECORD:

Licensee has been licensed since August 15, 2000, and has a record of prior violations as follows:

Citation No. 09-1238. \$500.00 fine.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.  
April 15, 2009.

Citation No. 09-2352C. \$1,250.00 fine and R.A.M.P. training mandated.

1. Sales to a minor.  
September 10, 2009.

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Citation No. 10-0829C. \$2,500.00 fine and one day suspension.

1. Sales to a minor.  
March 19, 2010.

DISCUSSION:

The Licensee indicated that the bartender left the premises at 2:36 a.m. and would have had very little time to clean up between serving the patrons and leaving. However, the Court finds the Bureau officer to be credible. The officer also indicated that he made numerous visits to the premises and found a violation on only one occasion.

In reviewing the prior record, it is noted that the Licensee had violations with sales to minors in 2009 and 2010. In that this is the third enhanced penalty violation in less than a four year period, as such a suspension is mandatory.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that the Restaurant Liquor License of 8 Manoa, Inc., License Number R-AP-SS-EHF-6816, be suspended for a period of two (2) days **BEGINNING** at 7:00 a.m. on Monday, April 30, 2012 and **ENDING** at 7:00 a.m. on Wednesday, May 2, 2012.

Licensee is directed on Monday, April 30, 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 a replacement placard is needed for any reason they are available at all State Liquor Stores/Wine and Spirit Shoppes.

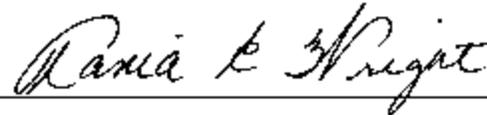
The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

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The Licensee is authorized on Wednesday, May 2, 2012 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

**Jurisdiction of this matter is retained.**

Dated this 2<sup>ND</sup> day of February, 2012.

A handwritten signature in cursive script, reading "Tania E. Wright", is written over a horizontal line.

Tania E. Wright, J.

**NOTE:** 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 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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.**

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