

Mailing Date: DEC 09 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0583
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-427501
v.	:	
	:	LID - 42923
SCHNOCH CORPORATION	:	
T/A BULLFROG BREWERY	:	
229-231 W. 4 TH ST.	:	
WILLIAMSPORT, PA 17701-6101	:	
	:	
	:	
LYCOMING COUNTY	:	
LICENSE NO. R-AP-SS-EHF-14950	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: ROBERT T. KOCH, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on April 7, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against SCHNOCH CORPORATION, License Number R-AP-SS-EHF-14950 (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 March 5, 2011, 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 patron.

The investigation which gave rise to the citation began on March 5, 2011 and was completed on March 5, 2011; and notice of the violation was sent to Licensee by Certified Mail on March 22, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on October 13, 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 March 5, 2011 at 8:00 p.m., two officers of the Bureau entered the licensed premises (N.T. 10).

2. Upon entry, the officers went in separate directions. One of the officers seated himself at the bar two barstools to the left of the beer taps at the bar (N.T. 11).

3. At approximately 8:10 p.m., four patrons walked up toward the bar and assembled behind the officer. One of the patrons, a male, did the ordering for all four patrons. This patron asked what beer was on tap, and the bartender tried to explain to him the different microbrews available. At this time the officer noticed slightly slurred speech coming from the male patron who was doing the ordering (hereinafter "the patron"). He seemed to have a hard time understanding what the bartender was telling him as he was trying to explain the different types of beers that were on tap (N.T. 12). During this period of time there was no music playing, although a band was setting up to begin performing (N. 13).

4. After the bartender explained the different types of beer the patron placed an order for all four patrons. He ordered a Billport Blonde draft pint for himself (N.T. 13-14).

5. Billport Blonde is a malt or brewed beverage brewed by the Licensee (N.T. 14).

6. At 8:25 p.m. the patron returned to the bar for another beer for himself. He stood in the same position as the first time and tried to order another Billport Blonde pint draft. As he was trying to tell the bartender what beer he wanted he was slurring his words badly. His speech was garbled and he paused in the middle of his sentence to get words together before he started to speak again. The bartender chuckled and laughed at him and his inability to get his words out (N.T. 14-15).

7. After the patron finished ordering, the bartender retrieved another Billport Blonde pint draft and served it to the patron. The patron paid for the drink (N.T. 15).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

The record in this case establishes that the patron in question, upon ordering his second drink, had extremely slurred speech, to the point that the bartender laughed at his inability to get his words out. This is a clear indication that the bartender was aware that the patron was intoxicated. On that basis, I conclude that the charge of serving a visibly intoxicated patron has been sustained.

PRIOR RECORD:

Licensee has been licensed since October 7, 1998, and has had one prior violation:

Citation No. 08-1998. Fine \$250.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time. July 19, 2008.

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.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee SCHNOCH CORPORATION, pay a fine of \$1,250.00 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.

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 is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us) within 30 days of the mailing date of this Adjudication. 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.

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) of the liquor Code [47 P.S. §4-471(d)].

Jurisdiction is retained.

Dated this 30TH day of November, 2011.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", 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. 11-0583
Schnoch Corporation