

Mailing Date: NOV 04 2011

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

PENNSYLVANIA STATE :
POLICE, BUREAU OF : Citation No. 11-0744
LIQUOR CONTROL ENFORCEMENT :
 : Incident No. W01-424958
 :
 v. :
 : LID - 45720
 :
 192 INC :
 192 MIDDLETOWN RD RTE 352 :
 GLEN MILLS PA 19342-1607 :
 :
 DELAWARE COUNTY :
 LICENSE NO. R-AP-SS-20083 :

JUDGE SHENKLE
BLCE COUNSEL: Erik Scott Shmukler, Esq.
LICENSEE COUNSEL: John J. McCreesh, III, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on May 3, 2011. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on March 25, 2011, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to a visibly intoxicated patron.

A hearing was held on September 27 in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On March 25, 2011, a liquor enforcement officer entered the licensed premises at about 10:20 p.m. There were about 100 patrons on the first floor, served by a couple of bartenders. There was another bar in the downstairs portion of the premises, with another 100 patrons and three bartenders. There was a live band performing downstairs (N.T. 4-7).

2. The officer's attention was drawn to a white man about 55 years old, bald with a grey goatee/mustache. He was wearing a sleeveless Harley-Davidson t-shirt, blue jeans and tan boots. He was at a table with three other people, talking to them, and was rocking back and forth as he did so. He was drinking from a bottle of beer. After 10 or 15 minutes he walked to the bar slowly and put his hands on it. As he did so he caused a pint glass containing beer to spill on the bar. A bartender cleaned up the spill and served the man another bottle of beer. The officer left the premises about five minutes later (N.T. 6-9).

3. Licensee's manager entered the downstairs portion of the premises after the liquor enforcement officer had left. He saw the man with the sleeveless t-shirt, and explained to him that the establishment's dress code required shirts to have sleeves. He offered to provide a t-shirt. The man took umbrage at this, interpreting the manager's statement as discrimination against bikers. The manager told the man he would have to leave, and followed him to the entrance. The man had no difficulty walking, and did not exhibit any of the classic signs of intoxication (N.T. 24-33).

CONCLUSIONS OF LAW:

The weight of the evidence does not support the proposition that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on March 25, 2011, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to a visibly intoxicated patron.

DISCUSSION:

The Bureau's evidence did not persuade me that the patron was visibly intoxicated, because the behavior described by the officer was also consistent with ordinary obnoxiousness. The officer's description of the events was sufficiently vague that it caused me to lack confidence in the accuracy of the evidence given. I did not think the period of observation was sufficient, after the beer was served to the man in question, to confirm the officer's suspicion.

On the other hand, Licensee's manager's testimony persuaded me that he knew his business and that the man in the Harley-Davidson t-shirt was not visibly intoxicated.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 11-0744 is DISMISSED.

Dated this 19TH day of OCTOBER, 2011.



David L. Shenle, J.

jb

NOTICE: 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.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.