

Mailing Date: MAY 09 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0814
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-417241
v.	:	
	:	LID -63396
KRAZY KAREN'S LLC	:	
T/A KRAZY KAREN RESTAURANT &	:	
SPORT LOUNGE	:	
1000-02 N CANAL ST	:	
SHARPSBURG	:	
PITTSBURGH PA 15215-2412	:	
	:	
	:	

ALLEGHENY COUNTY
LICENSE NO. R-AP-SS-EHF-3498

BEFORE: JUDGE SKWARYK

APPEARANCES:

BLCE COUNSEL: EMILY GUSTAVE, ESQUIRE
LICENSEE COUNSEL: CHARLES CAPUTO, ESQUIRE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 13, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Krazy Karen's, License Number R-AP-SS-EHF-3498 (hereinafter Licensee).

The citation contained three counts; however, Count Two was withdrawn by order dated March 26, 2012.

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Count One of the citation charges Licensee with violation of Section 471 of the Liquor Code, [47 P.S. §4-471], in that on February 24, 2011, Licensee's sole corporate officer was visibly intoxicated on the licensed premises.

Count Three of the citation charges Licensee with violation of Section 5105(a)(1) of the Pennsylvania Crimes Code [18 Pa. C.S. §5105(a)(1)] and Sections 404 and 471 of the Liquor Code, [47 P.S. §§4-404 and 4-471], in that on November 17, 2010, Licensee's sole corporate officer was found guilty of disorderly conduct and sentenced to pay a fine of \$337.00 as part of a plea agreement in the Allegheny County Court of Common Pleas for the charges of hindering apprehension or prosecution.¹

The investigation which gave rise to the citation began on August 6, 2010 and was completed on April 7, 2011. The notice of violation letter was mailed on April 26, 2011.

An evidentiary hearing was held on this matter on October 18, 2011, in Pittsburgh, Pennsylvania. The hearing was bifurcated for an additional witness. However, the continued hearing was not held due to the Bureau's withdrawal of Count Two.

Upon review of the transcript of the hearing and the Pre-Hearing Memorandum, we make the following Findings of Fact and reach the following Conclusions of Law.

FINDINGS OF FACT:

Counts One and Three:

1. Licensee is a corporation located in Allegheny County, PA and holds Restaurant Liquor License R-AP-SS-EHF-3498. (N.T. 4)
2. Licensee's Board-approved corporate makeup is as follows: Karen Iezzi, Member and Manager.
3. On November 17, 2010, Licensee's sole corporate officer, KI, pled guilty to a charge of disorderly conduct, and was sentenced to pay a fine of \$337.00. (N.T. 32-33, 39, 41, Ex. C-4 and C-5)
3. On February 24, 2011, at 9:23 p.m., a Sharpsburg police officer, BH, entered the licensed premises for a verbal domestic dispute, and spoke with Licensee's sole corporate officer, KI, who had a strong odor of alcohol on her breath, bloodshot eyes, and an intoxicated demeanor. (N.T. 15-17)
4. KI was not involved in the domestic dispute but identified the individuals. (N.T. 16-17, 37)

¹ Count Three was amended to read \$337.00 by order granted July 27, 2011.

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CONCLUSIONS OF LAW:

Counts One and Three – Sustained as charged; Count Two – withdrawn.

DISCUSSION:

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that a violation of the Liquor Code occurred. *Pa. Liquor Control Board v. PPC Circus Bar, Inc.*, 506 A.2d (Pa.Cmwlt. 1986); *In Re: Omicron Enterprises*, 499 A.2d (Pa.Cmwlt. 1982). The phrase “preponderance of evidence” has been defined as evidence which is of greater weight or more convincing than evidence which is in opposition to it. Black’s Law Dictionary, Fifth Edition, West Publishing Company, Copyright 1979, Page 1064.

As to Count One, a Sharpsburg Borough police officer testified that on February 24, 2011, at 9:23 p.m., he investigated a domestic dispute at the licensed premises and found Licensee’s sole corporate officer (KI) to be intoxicated with bloodshot eyes and the smell of alcohol on her. KI testified that she helped the patrolman with the incident and denied being intoxicated or on duty.

I find the testimony of the officer to be more credible. A Board-approved manager is always on duty on the licensed premises. 40 Pa. Code §5.23(a). As such, Count One is sustained as charged.

As to Count Three, KI testified that on November 17, 2010, she pled guilty to disorderly conduct and paid a fine of \$337.00. KI is Licensee’s sole member and manager. As such, Count Three is sustained as charged.

PRIOR RECORD:

Licensee has been licensed since May 7, 2010, and has no prior violations.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

I take administrative notice that the Licensee’s license expired on May 31, 2011; however, Licensee has temporary authority to operate and license transfer is pending.

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After due consideration of the circumstances giving rise to the citation and Licensee's citation history, the following penalty will be imposed in this case:

Count One – \$250.00

Count Three – \$250.00

ORDER:

THEREFORE, it is hereby ordered that Krazy Karen's, LLC, t/a Krazy Karen Restaurant & Sport Lounge, License Number R-AP-SS-EHF-3498, pay a fine of \$500.00 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.

Jurisdiction is retained.

Dated this 7TH day of MAY, 2012.



Robert F. Skwaryk, J.

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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.

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Detach Here and Return 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. 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

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