

Mailing Date: SEP 10 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 11-0840
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-419997
v.	:	
	:	
	:	PLCB LID - 48678
GSO, INC.	:	
400 N. 2 <sup>ND</sup> ST.	:	PLCB LICENSE NO. R-AP-SS-17923
HARRISBURG, PA 17101-1342	:	

**ADJUDICATION**

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL PIETRZAK  
LICENSEE: EDWARD A. TARASKUS, ESQUIRE**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on May 19, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against GSO, INC., License Number R-AP-SS-17923 (hereinafter "Licensee").

The citation contains two counts.

The first count charges Licensee with violation of Sections 471 and 493(31) of the Liquor Code [47 P.S. §§4-471 and 4-493(31)] and Section 780-101, et seq of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. §780-101] in that on December 18, 2010, January 15 and February 27, 2011, Licensee, by its servants, agents or employes, aided, abetted or engaged in the traffic in, or sale of, a controlled substance on the licensed premises and/or permitted the use of the licensed premises in the furtherance of the traffic in, or use of, a controlled substance.

The second count charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on January 15, 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 September 29, 2010 and was completed on April 6, 2011; and notice of the violation was sent to Licensee by Certified Mail on April 26, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on January 24, 2012 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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:

COUNTS NO. 1 AND 2

DECEMBER 18, 2010

1. On December 18, 2010, an officer of the Bureau entered the licensed premises at 12:15 a.m. As she entered she observed a bouncer at the door, and the night manager Stacey Semuta sitting in the vestibule area collecting a cover charge (N.T. 14-15).
2. The officer found over eighty (80) patrons in the premises being served by two bartenders (N.T. 16).
3. The officer walked to the back of the premises through the narrow pathway between the seating and the bar counter and through the dance floor area (N.T. 17).
4. The officer had received training at the PA State Police Academy with respect to different drugs, including marijuana. In addition, over the course of fourteen years she had been involved in drug investigations, and had developed the ability to recognize the odor of marijuana (N.T. 20-21).
5. As the officer walked through the dance floor area she smelled marijuana smoke (N.T. 21).
6. The marijuana smoke was coming from groups of men who were standing on each side of the dance floor smoking and passing around "blunts." "Blunts," in common parlance are cigars which have tobacco taken out and replaced with marijuana (N.T. 22).
7. The blunts were being smoked openly with no attempt at concealment in an area approximately eight feet from the bar. Neither the bartenders nor other staff made any attempt to stop the patrons from smoking the marijuana (N.T. 22-23).

JANUARY 15, 2011

8. On January 15, 2011, the officer returned to the licensed premises at 12:05 a.m. Upon entry, she observed three bartenders serving about forty (40) patrons (N.T. 25).

9. The officer purchased a drink and took a seat on the raised area across from the bar counter (N.T. 25).

10. At 12:15 a.m., four male patrons entered the premises and took positions at the bar counter closest to the dance floor. This was about five feet from where the officer was sitting (N.T. 26).

11. One of the male patrons in the aforementioned group had a cigar in his hand. He dumped the contents of the cigar onto the floor. He then reached into his pocket and took out a clump of material that appeared to be marijuana and filled the cigar with it. After he filled it, he licked it, and passed it off to one of the males in the group (N.T. 27-28).

12. The male patron to whom the blunt had been passed lit the blunt and began to smoke it (N.T. 28).

13. The patron who made the first blunt made two more. The group of four patrons stood at the end of the bar smoking the blunts and passing them back and forth (N.T. 28-29).

14. During the time the blunts were being made and smoked, there were bartenders in their area serving drinks to these four patrons (N.T. 30-31).

15. After the four patrons began smoking the blunts the officer smelled a strong odor of marijuana which had not been present before. This odor was coming from these four patrons (N.T. 31).

16. After the officer observed the four male patrons smoking the blunts, another group of five male patrons entered the premises, and a male dressed in dark clothing told the officer and three other patrons seated near her that they would have to move (N.T. 32).

17. The officer moved a short distance and stood next to a statue. The group of five male patrons took these seats, and a bar tender came over and placed a pitcher containing a mixed alcoholic beverage and a bottle of vodka on the table (N.T. 32 and 36).

18. While the officer was standing next to the statue, she observed a female patron who was having trouble maintaining her balance. She was on the dance floor staggering as she was trying to dance (N.T. 33).

19. While the female patron was dancing, she lost her balance, and one of the four male patrons who were smoking blunts grabbed her. The female patron then began to grind her buttocks into his groin area while he was holding her (N.T. 33).

20. The female patron could not maintain her balance, and the male patron literally held her up (N.T. 84).

21. After dancing with the aforementioned male patron, the female patron staggered away and proceeded toward the five male patrons seated at the table where the officer had previously been seated (N.T. 34).

22. As the female patron was moving, she was asked to take a picture of a group of female patrons. She was handed a camera and had trouble trying to figure out how to take the picture. She fumbled with the camera, and she dropped it. When she bent over to pick it up, she fell (N.T. 34).

23. The officer and another patron picked the female patron up off the floor. The female patron didn't seem to acknowledge that she fell and proceeded toward the five male patrons seated at the table (N.T. 34).

24. Upon arriving at the table where the five male patrons were seated, the female patron grabbed the pitcher containing the mixed alcoholic beverage and lifted the pitcher into the air (N.T. 35).

25. One of the five male patrons at the table grabbed the female patron and put the pitcher back on the table. He told her to get a cup (N.T. 35).

26. The female patron teetered around and made her way to the bar counter. She flopped on the bar counter with her upper body resting on the bar counter and she yelled with slurred speech for the bartender to give her a cup (N.T. 35).

27. The bartender gave the female patron a cup, and she staggered back over to the table where the five male patrons were seated. The male patron who had taken the pitcher from her poured some of the alcoholic mixed drink into her cup. The female patron sat on his lap and drank some of the mixed alcoholic beverage (N.T. 36).

28. The officer moved her position from a spot near the statue to the other side of the room near where the four male patrons who were smoking blunts were standing. From this position she saw one of these male patrons finish his blunt, and place the butt at the foot of the statue. The officer went back to the statute picked up the remains of the blunt and put it in her coat pocket (N.T. 37).

29. The officer left the licensed premises at 12:40 a.m. She returned to her district office and placed the remains of the blunt in the evidence facility (N.T. 38-39).

30. On January 19, 2011 the officer took the remains of the blunt from the district office evidence facility to the Pennsylvania State Police Regional Laboratory for chemical analysis (N.T. 39).

31. Laboratory analysis of the remains of the blunt determined that it contained marijuana (N.T. Exhibit C-3).

FEBRUARY 27, 2011

32. Steven Kisner, as of the date of the hearing in this case was the Head of Security for the Harrisburg Mall. He also worked part time for the Pennsylvania Fish Commission as a conservation officer. Mr. Kisner worked for seventeen and one-half years as a police officer for Penn Township and at the same time was Chief of Police for Halifax Township for two years. Part of his experience as a police officer was as a detective for the Tri-County Drug Task Force where he did undercover work involving the observations of drug transactions and the use of drugs (N.T. 66-67).

33. As part of his training for the Tri-County Drug Task Force, Mr. Kisner attended the Pennsylvania State Police Academy where he took a forty (40) hour course specifically dealing with drug enforcement. He also took courses every other year at Harrisburg Area Community College to keep abreast of drug identification and paraphernalia. Part of his training involved controlled burns of marijuana in order to become familiar with the odor of marijuana smoke (N.T. 68).

34. In his work as a police officer, Mr. Kisner encountered the use of marijuana (N.T. 69).

35. On February 27, 2011, Mr. Kisner entered the licensed premises in a social capacity at 10:30 p.m. Upon entry he observed two male bartenders and one female bartender rendering service to between forty (40) and fifty (50) patrons (N.T. 69-70).

36. Mr. Kisner and his girlfriend purchased Budweiser beers and stood on the raised area near the "King Tut Mummy." (N.T. 10).

37. At 11:00 p.m., Mr. Kisner observed at a table about 15 feet from him a male individual smoking a blunt which was a cigar which contained marijuana. While smoking this individual would take a deep breath and hold it before exhaling (N.T. 71-72).

38. At this time (11:00 p.m.) Mr. Kisner detected a slight odor of marijuana in the air (N.T. 72).

39. The individual smoking the blunt was about ten feet from the bar counter (N.T. 72).

40. After observing the patron smoking the blunt, Mr. Kisner was approached by a male patron who wanted to know if he wanted to buy any of an assortment of drugs that he had for sale. Mr. Kisner said he wasn't interested, and the man disappeared into the crowd (N.T. 73-74).

41. Subsequently, Mr. Kisner was approached by another male patron who asked him if he wanted to purchase crack. When Mr. Kisner declined this patron mingled back into the crowd (N.T. 76-77).

42. Mr. Kisner also observed two female patrons seated at a table, take a cigar and unroll it, place what appeared to be marijuana in it and put it back together. While the female patrons were doing this, one of the bartenders was cleaning up tables in the immediate area and made no attempt to find out what the patrons were doing or to stop them. After putting the cigar back together, the two female patrons took it back toward the bathroom (N.T. 77-81).

43. As Mr. Kisner and his party were attempting to leave the establishment, a third individual approached him, and asked if he wanted to buy "heart." Mr. Kisner understood "heart" to be crack cocaine. When Mr. Kisner declined, this individual moved on to another table where he completed a sales transaction (N.T. 82).

44. Mr. Kisner and his party left the licensed premises at 12:15 a.m. (N.T. 83).

45. From 11:30 p.m. until the time he left, Mr. Kisner detected a heavy haze of marijuana smoke that went the whole length of the establishment. The odor of marijuana was very strong (N.T. 83-84).

#### RELATED EVENTS

46. On March 31, 2011 the investigating officer in this case spoke with Mr. Kamionka the operating partner of the licensed business, by telephone. The officer told Mr. Kamionka what she had found during her investigation. Mr. Kamionka did not appear to be aware of the activities the officer had seen. He appeared to be angry, and he told the officer he would take care of the situation (N.T. 42-43).

47. During the telephone conversation with the officer on March 31, 2011, Mr. Kamionka identified Stacey Semuta as the nighttime supervisor for the licensed premises (N.T. 43).

48. On April 2, 2011 Gregory Harvat, Liquor Enforcement Officer Supervisor for the Bureau, visited the licensed premises shortly after 1:00 a.m. He identified himself and asked to speak to whoever was in charge. He was introduced to Stacey Semuta (N.T. 58).

49. Supervisor Harvat asked Semuta if she was aware of the burning of marijuana on the licensed premises. Semuta said that it occurred every day. Further she said that not only did patrons smoke marijuana on the premises but they openly rolled it (N.T. 60).

50. After the telephone conversation on March 31, 2011 between the investigating officer and Mr. Kamionka, a large sign was placed on the front door which prohibited all smoking on the licensed premises after 10:00 p.m. (N.T. 61).

51. On May 6, 2011, Supervisor Harvat again met with Stacey Semuta. Harvat asked Semuta if she ever contacted the Harrisburg Police Department about drug activity on the licensed premises. Semuta said that she did not contact the police (N.T. 63).

52. Supervisor Harvat also asked Semuta if any other measures were taken to prevent drug activities on the licensed premises. Semuta indicated that when the premises first opened she made arrangements with the DJ or promoter to turn the lights up every ten to fifteen minutes. Also they would turn up the lights if they noticed the smell of marijuana to discourage the activities. This practice became less and less to the point that they no longer turned up the lights (N.T. 63).

CONCLUSIONS OF LAW:

Counts 1 and 2 of the citation are **sustained**.

DISCUSSION:

COUNT NO. 1

The activities which occurred on the licensed premises on the dates in question clearly violated the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. §780-101 et seq] and Sections 471 and 493(31) of the Liquor Code [47 P.S. §§4-471 and 4-493(31)] in that personnel of Licensee aided in the possession, distribution and use of marijuana and other controlled substances on the licensed premises. Further, management personnel knew or should have known of such activity and took no substantial, affirmative steps to prevent this activity.

The activities and conditions observed by the Officer of the Bureau on December 18, 2010 and January 15, 2011 as well as the evidence which was collected on January 15, 2011 when viewed together with the observations made by Mr. Kisner on February 27, 2011, clearly establishes the open possession, preparation and use of marijuana on the licensed premises on the three dates charged as well as the offering for sale of "crack" on the licensed premises on February 27, 2011. Such activities constitute clear violations of the Pennsylvania Drug, Device and Cosmetic Act (supra). Further, the failure of the employes of Licensee to make any attempt to stop or prevent these activities establishes that Licensee permitted the use of the licensed premises in furtherance of the traffic in or use of those substances.

In permitting the aforementioned violations to occur Licensee has not only violated the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act, but also Sections 493(31)(ii) of the Liquor Code [47 P.S. §4-493(31)(ii)].

The Supreme Court of Pennsylvania has held that violation of the criminal laws of the Commonwealth, where appropriate scienter is present constitutes “other sufficient cause” as that term is used in Section 471 of the Liquor Code (supra). *Pa. Liquor Control Board v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988).

Violations of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act make any violation of that act subject to criminal penalties. Consequently, a violation of this Act by a liquor licensee constitutes “other sufficient cause” as that term is used in Section 471 of the Liquor Code (supra), where the appropriate scienter is present. It is also a violation of Section 493(31) of the Liquor Code (supra).

The Supreme Court of Pennsylvania has mandated that when a licensee has been found to have committed a violation which is classified as “other sufficient cause,” some element of scienter must be present before the penalties set forth in Section 471 of the Liquor Code (supra) may be applied. The test set forth by the court is as follows:

1. Whether the licensee knew or should have known of the illegal activities by an employe or patron. If so, the licensee is liable.
2. A licensee may defend his license by demonstrating he took substantial, affirmative steps to guard against a known pattern of illegal activities.

*Pa. Liquor Control Board v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988).

The aforementioned language has been imported directly into Section 493(31)(ii) of the Liquor Code (supra) and must be met in order to establish a violation of that Section.

In this case the smell of marijuana smoke was present on all three dates involved in this case. In addition, individuals were observed smoking “blunts” (cigars containing marijuana) in full view of the bartenders on the licensed premises.

More importantly, the night manager for the licensed premises admitted that she knew that marijuana was openly burned on the licensed premises and was also openly rolled (See Finding No. 49).

Further the night manager admitted that she never contacted the police about drug activity on the licensed premises (See Finding No. 51).

It is clear that Licensee, through its bartenders and managers knew or should have known of the illegal marijuana and other drug use on the licensed premises and took no real affirmative steps to prevent such activity from occurring.

On the basis of the foregoing, I conclude that Count No. 1 of the Citation is sustained.

COUNT NO. 2

The record discloses that a female patron clearly exhibited intoxicated behavior on the dance floor and at the bar on the licensed premises on January 15, 2011. She then obtained a cup from a bartender into which she placed an alcoholic beverage by another patron. The female patron then drank a portion of the alcoholic beverage. On the basis of these facts, the charge in Count No. 2 of the Citation is sustained.

The sole appellate case of which I am aware which discusses the issue of “knowledge” as it pertains to serving alcohol to visibly intoxicated persons is *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. J.E.K. Enterprises, Inc.*, 680 A.2d 53 (Pa. Cmwlth 1996). In that case the Commonwealth Court held that where a visibly intoxicated patron was furnished alcoholic beverages on the licensed premises without the knowledge of the employees of the licensee, the licensee could not be held responsible under section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. In reaching this conclusion Judge Pelligrini said:

“...it is only unlawful for that person (visibly intoxicated adult) to be served or allowed to be served alcohol by the licensee or one of its employees. A violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] only occurs when a licensee ‘permits’ the consumption of alcohol by taking or failing to take actions to prevent it from occurring...” (Emphasis supplied).

In this case the female patron in question openly engaged in behavior which left no question as to her intoxication. She culminated this behavior by resting her upper body on the bar and yelling in slurred speech for the bartender to give her a cup (See Findings No. 18, 19, 20, 21, 22, 23, 24, 25 and 26). The bartender gave her a cup which she took to a patron who filled it with a mixed alcoholic beverage. The female patron then drank from the cup.

It is clear that the bartender must have been aware that the female patron was intoxicated. Further, it should have been clear that the plastic cup which was given to her was most probably going to be used to consume alcohol. Since there is no evidence in the record to indicate that any employe of Licensee took any action to prevent the female from obtaining and consuming the mixed alcoholic beverage, I can only conclude that under these circumstances they permitted her to be furnished the alcoholic beverage by failing to take action to prevent such from occurring.

Based upon the foregoing, I conclude that the charge in Count No. 2 of the Citation is sustained.

PRIOR RECORD:

Licensee has been licensed since November 13, 2001, and has had four prior violations:

IN RE:

Citation No. 04-1568. Fine \$1,500.00.

1. Sales to visibly intoxicated persons.
2. Used loudspeakers or devices whereby music could be heard outside.

Citation No. 06-2533. Fine \$300.00.

1. Failed to appoint a Board approved full time manager for the licensed premises. May 2003 through September 20, 2006.

Citation No. 07-2812. Fine \$450.00.

1. Used loudspeakers or devices whereby music could be heard outside. September 14 and October 14, 2007.

Citation No. 08-0314. Fine \$1,600.00.

1. Failed to appoint a Board approved full time manager for the licensed premises. September 21, 2006 through January 9, 2008.
2. Failed to notify the Board within 15 days of a change of officers. February 10, 2006.
3. Failed to require patrons to vacate the premises not later than one-half hour after the required time. January 1, 2008.
4. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m. January 1, 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 \$50.00 or more than \$1,000.00 or both for violations of the type found in Count No. 1 of this case.

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 Count No. 2 of this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$1,000.00 and 20 days suspension  
Count 2 - \$1,750.00 and RAMP training

ORDER

THEREFORE, it is hereby ordered that Licensee GSO, INC., pay a fine of \$2,750.00 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 the restaurant liquor license (including all permits and Licensee Discount Card) of GSO, INC., License No. R-AP-SS-17923 be suspended for a period of twenty (20) days. However, the suspension period is deferred pending reactivation of Licensee's license at which time the suspension period will be fixed by further Order.

IT IS FURTHER ORDERED that the Bureau of Licensing notify the Office of Administrative Law Judge of the reactivation of Licensee's license so an Order may be entered fixing the dates for suspension.

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](http://www.lcb.state.pa.us); Email Address: [LBEducation@state.pa.us](mailto: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)].

IT IS FURTHER ORDERED that since Licensee's license is inactive, so much of this Adjudication as it relates to mandatory compliance with Liquor Code Section 471.1 pertaining to Responsible Alcohol Management is deferred pending license reactivation.

Jurisdiction is retained.

Dated this 29<sup>TH</sup> day of August, 2012.



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**

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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

IN RE: CITATION NO. 11-0840  
GSO, INC.