

Mailing Date: APR 10 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0850
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W04-429502
v.	:	
	:	LID -59710
THE DOUBLE T BAR AND GRILL INC	:	
1595 MCCLELLANDTOWN RD	:	
GERMAN TWP	:	
MCCLELLANDTOWN PA 15458-0272	:	
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FAYETTE COUNTY  
LICENSE NO. R-AP-SS-15523

**BEFORE:** JUDGE SKWARYK

APPEARANCES:

**BLCE COUNSEL:** MICHAEL NICKLES, ESQUIRE  
**LICENSEE COUNSEL:** VINCENT ROSKOVENSKY II,  
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 The Double T Bar and Grill, Inc., License Number R-AP-SS-15523, (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 April 19, 2011, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron.

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The investigation which gave rise to the citation began on April 19, 2011 and was completed on April 19, 2011. The notice of violation letter was mailed to Licensee on April 29, 2011.

An evidentiary hearing was held on this matter on February 23, 2012, in Pittsburgh, Pennsylvania.

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:

1. Licensee is a corporation located in Fayette County, Pennsylvania, and holds Restaurant Liquor License R-AP-SS-15523. (N.T. 4)
2. On Tuesday, April 19, 2011, at 8:33 p.m., an enforcement officer visited the premises to conduct an Age Compliance Check. (N.T. 7)
3. During the visit, the enforcement officer observed a male patron (NB) who had slurred speech, glassy eyes, was swaying, and smelled of beer. (N.T. 8)
4. NB spoke to the officer throughout his visit while leaning on and touching the officer, and his breath smelled of beer. (N.T. 8-9, 13).
5. NB loudly yelled across the bar with slurred speech four or five times, "Who the f—k played this song?" when a song came on the jukebox which he did not like. (N.T. 9)
6. NB spilled a 12-oz. bottle of Budweiser beer on the bar counter and the bartender (DA) asked him if he wanted another beer and if he was driving and he did not reply. (N.T. 9)
7. DA then served NB another 12-oz. bottle of Budweiser beer and a bottle of Miller Lite to the enforcement officer. (N.T. 9)
8. The enforcement officer referred to NB by a nickname, and he became agitated by this. (N.T. 10)
9. NB was a regular customer known to the bartender, DA. (N.T. 35-36)
10. On April 19, 2011, Licensee's president was not on the premises during the officer's visit. (N.T. 39-40)

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CONCLUSIONS OF LAW:

Sustained as charged.

DISCUSSION:

The burden of proof is on the Bureau to show by a clear preponderance of the evidence that Licensee's bartender furnished an alcoholic beverage to a visibly intoxicated patron. In re Omicron Enterprises, 449 A.2d 857 (Pa.Cmwlth 1982).

A Liquor Control Board Agent (BLCE Enforcement Officer) is competent to testify that a patron exhibited the signs of visible intoxication when he was served alcoholic beverages by licensee's employee. Laukemann v. Pa. Liquor Control Board, 475 A.2d 955 (Pa.Cmwlth 1984); Roylene Ashman v. Pa. Liquor Control Board, 542 A.2d 217 (Pa.Cmwlth 1988).

The issue is whether the patron's behavior and characteristics were such as to put the bartender on notice that the patron was visibly intoxicated when furnished an alcoholic beverage.

At the hearing held on this matter, the officer testified in detail as to his undercover visit to the licensed premises during the evening of April 19, 2011. The officer testified that he sat next to the male patron who spoke to him throughout his visit while leaning on and touching the officer. He testified that the patron had slurred speech, glassy eyes, was swaying, and smelled of beer. The bartender served him a 12-oz. bottle of Budweiser beer which he spilled on the bar counter and the bartender asked him if he wanted another beer and if he was driving and he did not reply. He was then served another 12-oz. bottle of Budweiser beer.

The bartender and the owner testified the patron is known to them and his odd behavior and personality are his usual demeanor.

The bartender testified that she is not R.A.M.P. trained but learned how to recognize visibly intoxicated patrons at the bar by knowing the customers and their actions and just seeing them over a period of two years, and that she never served a visibly intoxicated patron. She stated that she never served this patron when he was visibly intoxicated at the premises.

Licensee's owner, Anthony Wroble, testified he was not at the premises when the enforcement officer was there.

I find the testimony of the officer to be more credible.

After a careful review of the record, I find that the Bureau has met its burden of proof in this case.

As such, the citation is sustained as charged.

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PRIOR RECORD:

Licensee has been licensed since March 17, 2008, and has one prior violation, to wit:

Citation No. 10-1903. Fine \$250.00.

1. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises.  
July 18, 2010.

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.

In mitigation, Licensee received a Notification of Compliance letter from the Bureau for not serving an underage buyer on April 19, 2011. (Ex. L-1)

After due consideration of the circumstances giving rise to the citation and Licensee's citation history, a fine of \$1,150.00 and mandatory R.A.M.P. training will be imposed in this case.<sup>1</sup>

ORDER:

THEREFORE, it is hereby ordered that The Double T Bar and Grill, Inc., License Number R-AP-SS-15523, pay a fine of \$1,150.00 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 Section 471.1 of the Liquor Code [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management in the following manner: Licensee is directed to contact 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)) within 30 days of the mailing date of this Adjudication in order to seek assistance in the compliance process. 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) or (e) of the Liquor Code [47 P.S. §4-471(d) or §4-471(e)].

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<sup>1</sup> [47 P.S. §4-471(d)], effective June 12, 2006.

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Jurisdiction is retained.

Dated this 3<sup>RD</sup> day of MARCH, 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.**

Detach Here and Return 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. 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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