

Mailing Date: OCT 01 2012

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 11-0966
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W06-429459
	:	
v.	:	
	:	
	:	PLCB LID - 46796
G.W.F.B., INC.	:	
T/A FORT BRADY HOTEL	:	PLCB LICENSE NO. H-AP-SS-EHF-3194
18-20 N. MAIN ST.	:	
MUNCY, PA 17756-1098	:	

ADJUDICATION

**BEFORE JUDGE THAU
BUREAU COUNSEL PIETRZAK
LICENSEE: EUGENE WALBURN, PRO SE**

BACKGROUND:

This proceeding arises out of a citation that was issued on June 2, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against G.W.F.B., INC., License Number H-AP-SS-EHF-3194 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 2701, 2709 and 5503 of the Crimes Code [18 Pa. C.S. §§2701, 2709 and 5503] in that on March 12, 2011, Licensee, by its servants, agents or employes, committed simple assault, harassment and engaged in disorderly conduct.

The investigation which gave rise to the citation began on April 18, 2011 and was completed on May 16, 2011; and notice of the violation was sent to Licensee by Certified Mail on May 19, 2011. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on July 25, 2012 at 542 County Farm 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. Two patrons entered the premises several hours prior to midnight, March 11, 2011. They both consumed a large quantity of beer (N.T. 100-103).
2. They departed at 2:30 a.m., March 12, 2011. One, Ms. S., left with a mug of beer. Mr. Walburn, Licensee's President, saw the two, Ms. S and Ms. K., depart the premises. He followed them out of the front the door as he wanted to claim the beer mug. He could not see Ms. S. so he requested the beer mug's return from Ms. K. Ms. S. came around from where she was hiding. She handed the beer mug to Ms. K. Mr. Walburn requested the return of the beer mug a second time. (N.T. 103-105).
3. Ms. K. said that she had no intention of wasting the beer. She began drinking beer out of the mug. Mr. Walburn reached out and grabbed the mug from Ms. K.'s hand. Ms. K. became agitated. She was yelling and throwing her hands about. Mr. Walburn caused injury to Ms. K. (N.T. 150-158; 165-172).

CONCLUSION OF LAW:

Licensee, by its servants, agents or employes committed harassment in violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 2709 of the Crimes Code [18 Pa. C.S. §2709].

DISCUSSION:

I find it incomprehensible that the Bureau issued a citation based on the word of two lay persons who admittedly consumed copious amounts of alcoholic beverages thereby rendering their ability to recall highly suspect. In fact, one provided a statement to a municipal Police Officer that was inaccurate (N.T. 110-113). Furthermore, both witnesses agreed their behavior was unacceptable; alcohol severely impaired their judgment. Both accepted their contribution to creating a situation that was readily susceptible to criminal conduct. Both recognized their individual culpability.¹

¹ I cringe at the "victim/perpetrator" terminology when I discover the so-called victim is not completely innocent of blame.

Although with justifiable provocation, Mr. Walburn is not excused from his contribution. He had no business behaving in the manner he did.¹ I conclude Mr. Walburn committed harassment.

PRIOR RECORD:

Licensee has been licensed since September 29, 2000, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

PENALTY:

Mr. Walburn exercised poor judgment in trying to retrieve a mug valued at approximately \$3.00. I recognize Ms. K. and Ms. S. stole the mug, but Mr. Walburn overreacted.

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.

Under the circumstances of this case, the penalty imposed shall be a fine of \$300.00.

ORDER

THEREFORE, it is hereby ordered that Licensee G.W.F.B., INC., pay a fine of \$300.00 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 27TH day of September, 2012



Felix Thau, ALJ

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¹ Had it not been for Mr. Walburn's testimony, I would have readily dismissed the citation because it was based entirely on the recollection of two whose judgment and ability to recall was severely impaired.

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

IN RE: CITATION NO. 11-0966 G.W.F.B.,
INC.