

Mailing Date: MAY 17 2012

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0967
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W06-427183
v.	:	
	:	LID - 63567
SHOTHAVEN, LTD.	:	
T/A ANGELO'S	:	
4 N. HENDERSON ST.	:	
LOCK HAVEN, PA 17745-3517	:	
	:	
	:	
CLINTON COUNTY	:	
LICENSE NO. H-AP-SS-6229	:	

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: NO APPEARANCE**

ADJUDICATION

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 SHOTHAVEN, LTD., License Number H-AP-SS-6229 (hereinafter "Licensee").

The citation contains seven counts.

The first count charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)] in that Licensee, by its servants, agents or employes, issued checks or drafts dated April 13, 2011, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with, the institution upon which drawn for the payment of such checks.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on April 29, 2011, Licensee, by its servants, agents or employes, permitted patrons to enter that portion of the premises habitually used for the service of alcoholic beverages between 2:30 a.m. and 7:00 a.m., when it did not possess an Extended Hours Food Permit.

The third count charges Licensee with violation of Section 499(a) of the Liquor Code [47 P.S. §4-499(a)] in that on April 29, 2011, Licensee, by its servants, agents or employes, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

The fourth count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)] in that on April 29, 2011, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The fifth count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 493(31) and 780-101 et seq, of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act [35 P.S. §§4-493(31) and 780-101] in that on May 4, 2011, Licensee, by its servants, agents or employes, possessed a controlled substance on the licensed premises or on premises contiguous or adjacent thereto or used in connection therewith.

The sixth count charges Licensee with violation of Section 404 of the Liquor Code [47 P.S. §4-404] in that on March 10 and May 4, 2011, Licensee, by its servants, agents or employes, failed to adhere to the conditions of the agreement entered into with the Board placing additional restrictions upon the subject license.

The seventh count charges Licensee with violation of Section 5.32(a) of the Liquor Control Board Regulations [40 Pa. Code §5.32(a)] in that on April 10 and 24, 2011, Licensee, by its servants, agents or employes, used, or permitted to be used on the inside of the licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard outside.

The investigation which gave rise to the citation began on March 2, 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 February 7, 2012 in the Loyalsock Complex, 542 County Farm Road, Suite Two, Montoursville, Pennsylvania. No one appeared at the hearing on behalf of Licensee. A citation hearing notice was sent to Licensee at its address of record, 4 N. Henderson Street, Lock Haven, PA 17745-3517 by certified mail on December 23, 2011. The notice set forth the date and time of the hearing as February 7, 2012 at 9:30 a. m., and the place of hearing as The Loyalsock Complex, 542 County Farm Road, Suite Two, Montoursville, PA 17754-9865.

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:

COUNT 1

1. On April 13, 2011 Licensee purchased malt or brewed beverages from Mid-State Beverage Co. In payment therefore, Licensee issued its check in the amount of \$232.41. The check was returned by Licensee's bank for insufficient funds (N.T. Exhibit C-7).

2. The aforementioned check was not made good in a timely manner (N.T. 22-23).

COUNTS 2, 3 AND 4

3. On April 29, 2011 at approximately 3:00 a.m. James Dauberman, Christina Ross, Mike Knar and Mark Caruso, Jr., principal of Shothaven, Ltd. arrived at the licensed premises (N.T. 26-27).

4. Mark Caruso let the other three individuals into the licensed premises and entered himself (N.T. 27).

5. Upon entry, Mark Caruso obtained a bank bag from a desk drawer in the back room. He took marijuana from the bank bag and packed it into pipe bowl, after which Caruso, Dauberman and Ross smoked the marijuana (N.T. 28-29).

6. After smoking the marijuana in the pipe, Caruso gave Dauberman marijuana that he put into a cigarette pack belonging to Christina Ross (N.T. 29-30).

7. During the time that the aforementioned four individuals were on the licensed premises after 3:00 a.m., the four of them drank shots of liquor and beer (N.T. 30-31).

8. Between 5:00 a.m. and 6:00 a.m., the four individuals left the licensed premises (N.T. 31).

COUNT 5

9. On May 4, 2011, an officer of the Bureau entered the licensed premises to conduct a routine inspection (N.T. 13-14).

10. During the inspection, the officer interviewed Ann Bartholomew, the kitchen manager (N.T. 15).

11. In order to examine records in connection with the operation of the kitchen, Bartholomew led the officer to a desk in the office area of the licensed premises at the rear of the kitchen where the records were kept. Bartholomew indicated that she shared a desk in this area with Licensee's principal, Mr. Caruso. She indicated that one portion of the desk was used by Mr. Caruso and the other portion was used by her (N.T. 16).

12. In order to examine the records, the officer opened the top drawer of the desk which contained the receipt books and other records of Ms. Bartholomew. As he did so, he discovered a blue bank bag on top of the records (N.T. 16).

13. The officer looked into the bank bag and found a substance that appeared to be marijuana. He then contacted Lock Haven City Police Department Detective Shoemaker (N.T. 17).

14. Detective Shoemaker, in addition to being a major crime detective for the Lock Haven Police Department is a member of the drug task force for the Pennsylvania Attorney General's Office. He has received training from the Beckon Dickenson Laboratory of Georgia in the field testing of various narcotics. He has also received training from the FBI Drug Enforcement Agency, the Pennsylvania State Police, and the University of North Florida. He is certified by the Beckon Dickenson Laboratory to administer field tests for the identification of narcotics (N.T. 35).

15. Detective Shoemaker came to the licensed premises and examined the substance that the officer had found in the blue bank bag. He determined that it appeared to be marijuana (N.T. 37-38).

16. Detective Shoemaker "mirandized" Mr. Caruso and asked him if he understood his rights. He indicated that he did and agreed to be interviewed without an attorney present. Caruso readily admitted that he had had in his possession the marijuana that the officer had found in the blue bank bag. He indicated that he had not smoked it but he had had it in his possession for two or three weeks (N.T. 38).

17. Mr. Caruso voluntarily gave Officer Shoemaker a written statement to the effect that he had had the marijuana in his possession for two or three weeks, but he had not smoked any of it (N.T. 38-39).

18. Detective Shoemaker took the substance found in the blue bank bag to his office where he conducted a field test on it. The results of the test showed positive for the presence of marijuana. The substance was then sent to the Harrisburg laboratory for analysis (N.T. 39).

19. The laboratory test confirmed the field test for the presence of marijuana (N.T. 39-40 and Exhibit C-8).

COUNT 6

20. On January 21, 2011, Mark Caruso, Jr., president of Licensee corporation, Shothaven, Ltd., entered into a Conditional Licensing Agreement (CLA) with the Pennsylvania Liquor Control Board. Paragraph 6(f) of the aforementioned agreement reads as follows:

6(f) Shothaven shall use a transaction scan device, as that term is defined in the Liquor Code, to scan the identification of all patrons purchasing alcoholic beverages, notwithstanding the fact that the patron may have had his or her identification scanned on a previous occasion. For the purposes of this action, "occasion" shall mean between 7:00 a.m. and 2:00 a.m. of the following day.

(N.T. Exhibit C-5).

21. On March 10, 2011 at 7:00 a.m., an officer of the Bureau entered the licensed premises and took a seat at the bar. Tending bar was corporate president of Licensee corporation Mark Caruso, Jr. (N.T. 9).

22. The officer ordered a draft beer, and Mr. Caruso asked for identification (N.T. 9).

23. The officer presented his Pennsylvania Driver's license. Mr. Caruso examined it and questioned the officer repeatedly as to his identification. He did not, however, run the identification through a transaction scan device (N.T. 9-10).

24. Mr. Caruso returned the officer's driver's license and served him the draft beer that he had ordered (N.T. 10).

25. Section 6(e) of the aforementioned CLA reads as follows:

6(e) Shothaven shall maintain a minimum eight (8) security cameras to monitor the entire licensed premises. These cameras shall be operating whenever the licensed premises is operating and shall permit recording. The input of all cameras will be recorded during all operating hours. Recording shall be retained for not less than one week and shall be available upon request to the Board, its employees or any local, state or federal law enforcement officials including but not limited to the local Lock Haven Police Department and employees of the Pennsylvania State Police, Bureau of Liquor Control Enforcement (Bureau); ...

26. The officer reviewed Licensee's security camera system on May 4, 2011 (N.T. 20).

27. As a result of the examination, the officer found that the licensed premises had a total of six cameras, four of which were recorded onto a digital DVR. The other two were recorded onto a manual VCR (N.T. 20-21).

COUNT 7

28. On April 10, 2011, the officer made an undercover visit to the licensed premises arriving at 1:00 a.m. The officer could hear amplified music emanating from the licensed premises from the location at which he had parked his car (N.T. 10).

29. The officer conducted a sound check and could hear music emanating from the licensed premises at distances up to 300 feet away (N.T. 11).

30. The officer entered the licensed premises and observed that a DJ was playing music that was amplified through loudspeakers (N.T. 11).

31. On April 24, 2011 the officer arrived at the licensed premises at 12:40 a.m. Upon arrival he could hear music emanating from within the licensed premises. The officer conducted a sound check and could hear music emanating from the licensed premises at a distance of approximately 300 feet (N.T. 12).

32. The officer entered the licensed premises where he observed a disc jockey playing music that was amplified through loudspeakers (N.T. 12).

CONCLUSIONS OF LAW:

Counts 1, 2, 3, 4, 5, 6 and 7 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since February 10, 2011, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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 Nos. 1, 2, 3, 5, 6 and 7 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. 4 of this case.

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

Count 1 - \$ 150.00 fine
Count 2 - \$ 500.00 fine
Count 3 - \$ 500.00 fine
Count 4 - \$1,500.00 fine
Count 5 - \$1,000.00 fine
Count 6 - \$ 300.00 fine
Count 7 - \$ 250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee SHOTHAVEN, LTD., pay a fine of \$4,200.00 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 8TH day of May, 2012.



Daniel T. Flaherty, Jr., J.

an

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

Citation No. 11-0967
Shothaven, Ltd.