



The citation charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that Licensee, by your 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, on May 15, 2011.

I presided at an evidentiary hearing on January 19, 2012 at 180 Charlotte Drive, Altoona, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on April 4, 2011 and completed it on May 16, 2011. (N.T. 7)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on, June 1, 2011. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 7)

3. On May 14, 2011, an undercover Bureau Enforcement Officer entered the premises at 11:55 p.m. At 12:56 a.m., the Officer's attention was drawn to a patron who was loud. The customer was having difficulty standing. His eyes were slightly open and glassy. He began yelling and screaming above the normal conversation levels within the establishment. (N.T. 12-18)

4. At about 1:30 a.m., the customer approached the bar counter, standing immediately adjacent to the Officer. The bartender asked the customer what he wanted. The customer ordered a beer. The bartender poured a draft beer into a plastic cup. The customer took two steps backwards. It appeared to the Officer that the customer had a difficult time retrieving the money to pay for the beer. (N.T. 18-20; 24)

5. The customer was being carefully watched by a second bartender because the Officer made a comment earlier in the evening that the customer appeared to be drunk. The Officer repeated that comment shortly before the customer was served at 1:30 a.m. The second bartender monitored that transaction carefully. The customer did not appear to be visibly intoxicated to her. (N.T. 77-78; 82-83)

6. The second bartender served the customer a sixteen ounce draft beer when he first entered the premises. She did not serve the customer at 1:30 a.m. She was standing at the credit card machine directly in front of the Officer, behind the service bar. Another bartender served the customer. (N.T. 76-77)

7. One of the two bouncers recognized the customer, although he did not know his name. He witnessed the beer service to the customer at 1:30 a.m. He saw no indication of visible intoxication while the customer was waiting for his beer. After the customer drank half the beer, the bouncer stopped the customer because he was concerned that he was taking the beer outside. The customer displayed no slurred speech or other indicia of visible intoxication during the bouncer's conversation with the customer. (N.T. 93-95)

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The violation is dismissed.

DISCUSSION:

Because I cannot accord the Officer's assessment significant weight, based on the credible testimony offered by Licensee's witnesses, who saw no visible intoxication signs, I dismiss the charge. (N.T. 35; 39; 43; 70)

Significantly, the Bureau provides no rebuttal regarding Licensee's testimony that the Officer commented about the customer's drunken condition twice. Had that testimony not been accurate, I assume Bureau Counsel would have called the Officer to testify on rebuttal. Consequently, I draw an inference that, had the Officer testified, he would have supported Licensee's testimony.

ORDER:

**Dismissal**

I dismiss the citation for the reasons above stated.

Dated this 10<sup>TH</sup> day of April, 2012.



Felix Thau, A.L.J.

bc

### General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

### Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

### Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us). The full requirements for an appeal can be found in 47 P.S. §4-471.