

Mailing Date: JUL 02 2012

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 12-0014
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W07-438588
v.	:	
	:	
IRONWOOD GRILL, INC.	:	PLCB LID No.: 44536
1830 OAKLAND AVE.	:	
STE. B	:	
INDIANA, PA 15701	:	PLCB License No.: R-AP-SS-18212

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Emily L. Gustave, Esquire

FOR LICENSEE: Stanley J. Wolowski, Esquire

**BACKGROUND:**

This proceeding arises out of a citation, containing one count, that was issued on January 17, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Ironwood Grill, Inc. (Licensee).

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 November 23, 2011.

I presided at an evidentiary hearing on April 13, 2012 at the Hampton Inn, 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 November 1, 2011 and completed it on December 4, 2011. (Commonwealth Exhibit No. C-1)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on December 20, 2011. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

3. A Bureau Enforcement Officer entered the premises on November 23, 2011 in an undercover capacity. He arrived at 10:15 p.m. After ordering a drink, the Officer positioned himself at a table not far from the bar serving area. The Officer's attention was drawn to an individual who appeared to be visibly intoxicated. (N.T. 11-13)

4. The customer (C), held on to patrons. His face was flushed and his eyes almost closed. C possessed a bottle of beer. The Officer noticed C standing on the dance floor. He dropped a bottle of beer he was holding on the floor. The bottle broke. A bartender cleaned the mess. The bartender then went behind the bar and served C another bottle of beer. (N.T. 13-15)

5. C drank some of the beer. He staggered backwards about three steps. The Officer caught C on one occasion as he was staggering backwards. It appeared as if there was a group of approximately eight to ten patrons all of whom seemed to know each other. They were wrestling. C engaged in some of the playful activities of the group. The Officer noticed a difference between C's behavior when engaging in some of the playfulness as opposed to when C seemed to be stumbling for no reason. (N.T. 16-17)

6. One member of the group gave C a shot of liquor at about 10:44 a.m. C received a second shot from another member of the group at 10:48 a.m. (N.T. 18-20)

7. Mr. F. was at the licensed premises that evening working as an independent contractor in the capacity of a "Security Consultant." He was hired by Mr. K., a friend, to provide protection. (N.T. 47-51)

8. Mr. F. did not consume any alcoholic beverages that evening. Mr. K. was drinking but Mr. F. could not determine how many drinks Mr. K. consumed. Mr. F. and Mr. K. remained at the premises anywhere from 2½ to 3½ hours. Mr. F. and Mr. K. are large individuals in terms of height and weight. Mr. F. and Mr. K. were “horsing around.” There were others in the group, of similar stature, who were also horsing around. (N.T. 56-60; 101; 105-108)

#### CONCLUSIONS OF LAW:

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

#### DISCUSSION:

I am not particularly enamored of the depth or manner the Bureau presents its case. Nonetheless, I am satisfied the Bureau has supplied sufficient testimony for me to sustain the charge<sup>1</sup>.

Licensee attempts to make much of the Officer’s initial identification of Mr. F. as the visibly intoxicated patron. However, the Officer subsequently testified he was not sure the visibly intoxicated patron was Mr. F. I readily understand why the Officer was mistaken as there were at least three members of the group of rather large stature.

Other than the determination of visible intoxication, Licensee’s witnesses confirmed much of the Officer’s testimony. Mr. F., the security guard for Mr. K. could not testify to the number of drinks Mr. K. consumed. Mr. F. was busy conducting “sweeps” of the licensed premises; he also took breaks to smoke about once every one-half hour or so. Mr. S., one of the group and also a person of large stature, could not say how much Mr. K. drank. Licensee’s two employees acknowledged they were so busy that they could not be attentive to the condition of all patrons. The employees also agreed that all drinks were purchased at the bar and that some customers received drinks from other customers.

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<sup>1</sup> If the Bureau has met its burden of proof, whether by a millimeter or a mile, I am required to sustain the charge. However, I commend **BLCE v. 120 East Allen, Inc.**, In Re Citation No.: 08-1841, [www.lcbapps.lcb.state.pa.us/webapp/Legal/PublicAdjudicationDisplay.asp?adjudication\\_year=2008&adjudication\\_sequence=1841&appeal=n](http://www.lcbapps.lcb.state.pa.us/webapp/Legal/PublicAdjudicationDisplay.asp?adjudication_year=2008&adjudication_sequence=1841&appeal=n), for an Adjudication which I consider a paradigm presentation supporting a charge of serving a visibly intoxicated patron.

Over the years, I have learned it is the familiar customer whose behavior may be disregarded as indication of visible intoxication. I've heard too many cases in which the licensee attributes a regular customer's behavior to the customer's natural and normal tendencies. Long ago, I remarked that licensees must be wary of the gregarious chap; his friendly and jovial behavior may mask signs of visible intoxication.

When a licensee observes behavior consistent with visible intoxication, yet serves that person, a serious error in judgment occurs. In this manner, the Liquor Code removes a significant measure of responsibility from licensees. Licensees are not required to isolate the cause of a customer's behavior. Licensee's are to do no more than respond to what is visible. If a customer manifests indicia of visible intoxication, that person ought not to be served; end of story.

I am firmly convinced the Officer observed Mr. K., otherwise identified herein as "C", receiving drinks from members of the group while Mr. K. was visibly intoxicated.

PRIOR RECORD:

Licensee has been licensed since July 16, 1999, and has the following Adjudication history:

In Re Citation No.: 04-0708. Fine \$50.00.

Possessed or operated gambling devices or permitted gambling on your licensed premises (horse races) on December 20, 2003.

In Re Citation No.: 08-1211C. Fine \$1,250.00 and R.A.M.P training mandated.

Sales to a minor on April 26, 2008.

In Re Citation No.: 09-0906. Fine \$300.00.

1. Permitted smoking in a public place where smoking is prohibited on March 5, 7 and 8, 2009.
2. Failed to post signage as required by the Clean Indoor Air Act on March 5, 7 and 8, 2009.

In Re Citation No.: 09-1897. Fine \$1,800.00.

1. Sales to a minor on June 6 and 7, 2009.
2. Minor frequenting on June 6 and 7, 2009.

In Re Citation No.: 09-2912. Fine \$650.00.

1. Used loudspeakers or devices whereby music could be heard outside on June 26, 27 and October 17, 2009.
2. Permitted smoking in a public place where smoking was prohibited on June 26, September 24, October 17 and 31, 2009.
3. Permitted a person under 18 years of age to be in a portion of the licensed premises where smoking was permitted on September 24 and October 31, 2009.

In Re Citation No.: 11-2204. Fine \$200.00.

Operated the licensed establishment without a valid health permit or license during the period August 1 through October 26, 2011.

PENALTY ASSESSMENT CRITERIA:

**Mandatory Requirement(s)**

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 the violation found herein.

Further, as this is Licensee's fourth violation of the Liquor Code and/or Crimes Code within four years, I must impose, at least, a suspension.

Further, Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to responsible alcohol management, mandates that Licensee participate in the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program (RAMP), since this is Licensee's first violation as herein found.

**Discretionary Component(s)**

I impose a \$1,800.00 fine and a one day suspension. I further order Licensee to become compliant with the Responsible Alcohol Management Program (RAMP).

ORDER:

In Re Citation No.: 12-0014; Licensee, Ironwood Grill, Inc.; PLCB LID No.: 44536;  
PLCB License No.: R-AP-SS-18212

### **Imposition of Fine**

Licensee must pay a \$1,800.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

### **Imposition of Suspension**

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the License, for one day, beginning Wednesday, August 22, 2012, 7:00 a.m., and ending Thursday, August 23, 2012, 7:00 a.m.

I order Licensee to post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Wednesday, August 22, 2012, 7:00 a.m. The Suspension Placard may not be removed until the suspension ends.

In the event Licensee does not comply with all conditions herein, the Bureau may issue an additional citation claiming Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

### **RAMP Compliance**

I order Licensee to comply with Liquor Code Section 471.1, pertaining to responsible alcohol management, for one year from the date of Bureau of Alcohol Education (BAE) certification.

Licensee must contact the BAE, Pennsylvania Liquor Control Board: toll free telephone No.: 1-866-275-8237; web site: [www.lcb@pa.gov](http://www.lcb@pa.gov); email address: [LBEducation@pa.gov](mailto:LBEducation@pa.gov) within thirty days of the mailing date of this Adjudication to effect full RAMP compliance. Licensee has ninety days from the mailing date of this Adjudication to be fully certified by the BAE.

Failure to comply may cause the Bureau to issue a citation alleging Licensee's noncompliance. Alternatively, the Bureau may request a modification of the penalty imposed in this Adjudication.

### **Retaining Jurisdiction**

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 25<sup>TH</sup> day of June, 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.

### 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.** 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