

Mailing Date: JAN 10 2012

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

PENNSYLVANIA STATE : In re Citation No. 12-0967
POLICE, BUREAU OF :
LIQUOR CONTROL ENFORCEMENT : BLCE Incident No. W09-436706
 :
v. : PLCB LID No. 61319
 :
MID-ATLANTIC RESTAURANT GROUP, LLC : PLCB License No. R-AP-SS-1100
T/A KELLY'S RESTAURANT TAPROOM :
1107 LANCASTER AVE :
BRYN MAWR, PA 19010-2707 :

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: Patrick M. McHugh, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on June 27, 2012. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on December 23, 2011, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated patron.

A hearing was held on December 4, 2012, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. A liquor enforcement officer was seated at a bar in the licensed premises at approximately 11:20 p.m. on December 22, 2012, when a man came to the bar and caused a drink to be knocked over. The bartender saw this. The man ordered four beers and "whatever the fuck that was," indicating the reddish-colored drink which had been spilled (N.T. 7-9, 16).

2. While the bartender was getting these drinks, the man had a conversation with the woman whose drink he had spilled. His speech was extremely slurred. His eyelids were heavy and he was unsteady on his feet. When the drinks were served, the man carried the beers from the bar through the crowd, almost falling over. After wandering upstairs and downstairs in the premises, including some time on the dance floor, the man's face looked very pale (N.T. 9).

3. At about 11:45 p.m. the officer was standing near to the man and asked him his name. The officer had difficulty understanding what he said, but she was eventually able to make out the man's name, that he was 22, and that he didn't drive that night. While they had this conversation the man was slouching, leaning against the wall and sliding down it (N.T. 10).

4. At about 12:10 a.m. on December 23, 2011, the officer was standing at the bar when the man approached it, standing directly to her left. He attempted to place an order with the same bartender who had served him earlier, saying something the officer couldn't comprehend. The bartender looked confused. Another man, who had come to the bar with the man the officer was observing and who appeared to be his companion, told the bartender they would like two cranberry vodkas. The bartender prepared these drinks in glasses, and the man and his companion each took one of them away from the bar, walking toward the bathroom area (N.T. 11-12, 25).

CONCLUSIONS OF LAW:

Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on December 23, 2011, by selling alcoholic beverages to one visibly intoxicated patron.

PRIOR RECORD:

Licensee has been licensed since July 8, 2009, and has had no prior violations.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$1,000.00 to \$5,000.00 range, or both, for violations of the type found in this case. Mandatory R.A.M.P. – certification is required by 47 P.S. §4-471(d) in these circumstances.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Mid-Atlantic Restaurant Group, LLC, t/a Kelly's Restaurant Taproom, License No. R-AP-SS-1100, shall pay a fine of one thousand dollars (\$1,000.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in Liquor Code Section 471.1, pertaining to Responsible Alcohol Management in the following manner. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (toll free telephone: 1-866-275-8237; www.lcb.state.pa.us) within thirty (30) days of the mailing date of this adjudication in order to receive assistance in the compliance process. Licensee must receive certification within ninety (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. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this adjudication.

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) of the Liquor Code, 47 P.S. Section 4-471(d).

Dated this 21ST day of DECEMBER, 2012.



David L. Shenkle, J.

jb

NOTICE: 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.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

Detach Here and Return 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. 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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Mid-Atlantic Restaurant Group, LLC