

Mailing Date: NOV 19 2013

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

PENNSYLVANIA STATE	:	In re Citation No. 12-1418
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W09-445073
	:	
v.	:	PLCB LID No. 44406
	:	
KNOLL'S VILLAGE 61, INC.	:	PLCB License No. R-AP-SS-2586
T/A VILLAGE TAVERN	:	
63 N CENTRE AVE. PO BOX 154	:	
LEESPORT, PA 19533-0154	:	

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE: Duane S. Knoll

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 26, 2012. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on June 14, 2012, 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 September 27, 2013, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On June 14, 2012, four liquor enforcement officers entered the licensed premises at about 11:10 p.m. Three of these officers are no longer employed by the Bureau, which was unable to procure their attendance at the hearing (N.T. 6, 18-19).

2. The bartender on duty was identified by the officer as a woman who was seated next to Licensee's president at the hearing. That woman's name is Erica, not Trish (N.T. 8, 13, 20).

3. The bartender who was on duty has worked at the licensed premises for 11 years as of this year. Licensee's rules, enforced by this bartender, do not permit sleeping at the bar. She did not and would not have put a plastic bag in front of a customer to contain puke (N.T. 20-21).

CONCLUSIONS OF LAW:

The weight of the evidence does not support the proposition that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on June 14, 2012, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to a visibly intoxicated patron.

DISCUSSION:

The officer who testified stated that one member of a group of five men in the licensed premises was celebrating his 21st birthday, and that talk among these men indicated to the officer that the birthday celebrator was trying to consume 21 shots of alcohol during the course of the evening. He said that a bartender called "Trish" responded to the officer's inquiry – how many drinks had the young man had – by asking that question of the group. One of them responded that he was on number 14, the officer testified, as relayed to him by "Trish" (N.T. 7-8).

The officer testified that the young man was exhibiting the classic signs of intoxication: slurred speech, eyes half shut and glassy, head on bar as if sleeping, stumbling and staggering as he went to the bathroom, and making comments about the state of his own intoxication. At 11:25, according to the officer's testimony, one of the group purchased a shot of liquor and put it in front of the 21-year-old, who drank it. This happened again a little while later. According to the officer, the bartender told the young man that she didn't trust him not to puke on the bar, and so put a plastic grocery bag in front of him to use if he was going to puke (N.T. 8-10).

I found the testimony presented by the Bureau to be less credible than that presented by Licensee. Extraordinary claims require extraordinary proof, which the Bureau was unable to present because of the departure from its employment of officers who might have corroborated the testimony given. As it is, I did not believe the Bureau's evidence because I found it unlikely.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 12-1418 is DISMISSED.

Dated this 4TH day of NOVEMBER, 2013.



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.