

Mailing Date: APR 12 2013

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 12-1447
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-446664
	:	
	:	
v.	:	
	:	
	:	PLCB LID - 63770
PAR-AXIS JOINT VENTURE	:	
T/A DRINKIN BONE	:	PLCB LICENSE NO. H-AP-SS-6237
860 N. FRONT ST.	:	
WORMLEYSBURG, PA 17043-1024	:	

ADJUDICATION

**BEFORE JUDGE FLAHERTY
BUREAU COUNSEL PIETRZAK
LICENSEE: SERGEY BALAYANTS, PRO SE**

BACKGROUND:

This proceeding arises out of a citation that was issued on October 4, 2012, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against PAR-AXIS JOINT VENTURE, License Number H-AP-SS-6237 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on June 23, 2012, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated patron.

The investigation which gave rise to the citation began on May 16, 2012 and was completed on August 31, 2012; and notice of the violation was sent to Licensee by Certified Mail on September 18, 2012. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 5, 2013 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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:

1. On June 23, 2012 an officer of the Bureau entered the licensed premises in an undercover capacity at about 1:10 a.m. (N.T. 13).
2. Upon entry the officer observed about 50 patrons present around the bar and on the dance floor (N.T. 13).
3. The officer sat at the end of the bar closest to the main entrance. Several minutes after he sat down he observed a male directly across from him that was speaking with his friends very loudly. This was in contrast to the friends who were with him who were speaking with him in moderate tones (N.T. 14-15).
4. The aforementioned patron was waving his arms as though he was trying to get the attention of someone, but there was no one that he was really yelling to. His speech was slurred and inconsistent (N.T. 15-16).
5. Several times this patron got off his chair and came around the bar passed the officer and went back to the dance floor and came back. His gait was very staggered and he was bouncing off stools as he came around to the officer's side of the bar (N.T. 16).
6. As he came close to the officer, the officer noticed that his eyes were half closed and bloodshot (N.T. 16).
7. The officer observed this patron walk to the back of the licensed premises twice. The second time he came back, he was staggering quite severely, and he collided with a man who appeared to be a doorman for the licensed premises. He then went out into the parking lot (N.T. 17).
8. As the aforementioned headed out into the parking lot he came in view of the officer through a glass door which was directly across from where the officer was sitting. The patron was staggering across the parking lot and two of his friends came up to him. Each grabbed him by the arm and spun him around and brought him back into the licensed premises (N.T. 17-18).
9. When the patron and his friends came back into the bar they came to a point which was about four feet from the officer (N.T. 18).
10. All three of the gentlemen stood at the bar. The patron whom the officer had been observing stood for a few minutes and then was leaning against the bar (N.T. 19).

11. The patron whom the officer had been observing appeared to fall asleep while standing at the bar. Someone from the group ordered three bottles of Corona beer. The bartender served the three bottles of Corona beer, placing one bottle in front of the patron whom the officer had been observing (N.T. 19-20).

12. The patron whom the officer had been observing attempted to retrieve his bottle and knocked it over. One of the bartenders eventually came over to clean it up (N.T. 20).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

PRIOR RECORD:

Licensee has been licensed since July 26, 2010, and has had three prior violations:

IN RE:

Citation No. 11-1648X. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. July 1, 2011.

Citation No. 11-1951X. Fine \$300.00.

1. Issued worthless checks in payment for malt or brewed beverages. July 29, August 19, 26, September 2 and 16, 2011.

Citation No. 12-0072X. Fine \$200.00.

1. Issued worthless checks in payment for malt or brewed beverages. September 30, 2011.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

That Section further provides for mandatory compliance with Liquor Code Section 471.1 [47 P.S. §4-471.1], pertaining to Responsible Alcohol Management when, as in this matter, Licensee has been found to have violated Section 493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

Under the circumstances of this case, the penalty imposed shall be a fine of \$1,250.00 and mandatory RAMP training.

ORDER

THEREFORE, it is hereby ordered that Licensee PAR-AXIS JOINT VENTURE, pay a fine of \$1,250.00 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.

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. Licensee is directed to initiate contact with The Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us; Email Address: LBEducation@state.pa.us) within 30 days of the mailing date of this Adjudication. Licensee must receive Certification within 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.

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. §4-471(d)].

Jurisdiction is retained.

Dated this 9TH day of April, 2013.



Daniel T. Flaherty, Jr., J.

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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

IN RE: CITATION NO. 12-1447
PAR-AXIS JOINT VENTURE