

Mailing Date: MAR 07 2014

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 13-0081
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: W08-443201
	:	
GEORGIA'S CITY LIGHTS, INC.	:	
T/A GEORGIA'S CITY LIGHTS	:	PLCB LID No.: 49895
3036 E. STATE ST.	:	
HERMITAGE, PA 16148-3307	:	PLCB License No.: R-AP-5128
	:	
	:	
	:	
	:	

**BEFORE:** JUDGE RODERICK FRISK

APPEARANCES:

**BLCE COUNSEL:** Emily L. Gustave, Esquire  
**LICENSEE COUNSEL:** Stephen J. Mirizio, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on January 30, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Georgia's City Lights, Inc., t/a Georgia's City Lights, License Number R-AP-5128 (hereinafter Licensee).

The citation contains two counts.

The first count charges Licensee's with violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)] in that on February 17, 2012, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of

alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

The second count charges Licensee's with violation of Section 499(a) of the Liquor Code, [47 P.S. § 4-499(a)] in that on February 17, 2012, Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

An administrative hearing was conducted on December 19, 2013 at 10:00 a.m., at 2 Parkway Center, Pittsburgh, PA. The Bureau was represented by Emily L. Gustave, Esquire. Licensee was represented by Stephen J. Mirizio, Esquire.

At the Administrative hearing, counsel for Licensee stipulated that the notice requirements as set forth at Section 471 of the Liquor Code have been satisfied.

After hearing the testimony presented, and upon review of the evidence submitted, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

COUNTS ONE AND TWO

1. On February 17, 2012 at 3:01 a.m., Corporal Young and Officer Mild with the Hermitage Police Department entered the parking lot of Licensee's premises in response to a complaint received from an unidentified individual concerning the premises. Upon their arrival, the officers met with the complainant off the premises. (N.T.16-19)
2. At 3:06 a.m., Corporal Young approached the tinted glass front door of Licensee's premises and observed a male standing behind the bar and a female with three additional males at the bar. (N.T. 20-24)
3. Corporal Young testified that he observed "beer bottles and short glasses of drinks" including at least two brown, unidentified beer bottles on the bar. Corporal Young specifically noted that a male, later identified as Emery Horvatich, was seated at the bar with an unidentified bottle of beer in front of him. (N.T. 22, 24, 33-35)
4. Following these observations, Corporal Young began knocking on the front door of Licensee's premises at which time he heard a female voice shout, "We're closed." (N.T. 26)

5. Corporal Young continued to knock on the front door and announced, "Hermitage Police," at which time the same female voice was heard shouting, "clear the drinks off the bar." (N.T. 26)
6. Corporal Young then observed the male standing behind the bar quickly gathering drinks assisted by the other individuals. (N.T. 26-27)
7. Moments later, the individuals inside the bar shouted that they needed to get the key. The female then approached the door and opened it with a key permitting Corporal Young's entry. (N.T. 27-28)
8. Upon entering, Corporal Young immediately determined that Licensee, Jim Gossler, was not on the premises. (N.T. 29-30)
9. Corporal Young then proceeded to identify the individuals on the premises. The only female was identified as Tabitha Myers-Clark and was the person heard making the aforementioned statements prior to the Corporal's entry. Ms. Myers-Clark was a bartender employed at Licensee's establishment and was on duty as a bartender earlier that evening. (N.T. 30, 33)
10. Emery Horvatic identified himself to Corporal Young as a door person employed that evening by Licensee. Mr. Horvatic was the male observed seated at the bar with an unidentified bottle of beer in front of him. (N.T. 22-23, 33-35)
11. Santos Velazques was the male Corporal Young observed behind the bar prior to his entry. Mr. Velazques identified himself as a "bar back" and responsible for checking identifications of patrons on the evening in question. (N.T. 35, 81)
12. At 3:08 a.m., Officer Mild, entered Licensee's premises following the off-the-premises questioning of the complainant. Officer Mild did not observe any activity inside Licensee's premises prior to his entry. (N.T. 47-52)
13. Upon entering the premises, Officer Mild assisted Corporal Young in identifying Jeremy Clark and Clinton O'Brien. (N.T. 51)
14. Corporal Young and Officer Mild did not observe the service or consumption of alcoholic beverages during this investigation. However, Corporal Young observed at least one of the individuals, Emery Horvatic, in possession of an unidentified bottle of beer. Other drinks were also observed on the bar. (N.T. 33-35, 38-39, 51-52, 110)
15. At the hearing, Licensee, James E. Gossler, testified that Tabitha Myers-Clark, Santos Velazques, Jeremy Clark, Clinton O'Brien and Emery Horvatic were employed at Licensee's premises during the evening of February 16/17, 2012. (N.T. 104-105)

16. On February 17, 2012, Licensee did not possess an after-hours food permit issued by the Board. (N.T. 14-15, Exhibit C-3)

DISCUSSION:

This Court notes at the onset it is well established that the Bureau must prove its case by a fair preponderance of the evidence. *Pennsylvania Liquor Control Board v. Leggens*, 542 A.2d 653 (Pa. Cmwlth. 1988); *Omicron Enterprises*, 449 A.2d 857 (Pa. Cmwlth. 1982); *Com. v. Moreno*, 14 A.3d 133 (Pa.Super. 2011).

It has been further established that it is for this Court to decide the credibility of witnesses and weight to be given to their testimony. *State Correctional Institute v. Robison*, 561 A.2d 82 (Pa. Cmwlth. 1989). Further, this Court may accept or reject, in whole or in part, the testimony of any witness. *Kubler v. Yeager*, 150 A.2d 383 (Pa. Super 1959). It is with these principles in mind that further analysis of this case is conducted.

At the hearing, Corporal Young arrived at Licensee's premises at 3:06 a.m. on February 17, 2012 and observed through the glass front door, a male standing behind the bar and four individuals at the bar. Corporal Young further noted that he observed at least two unidentified brown beer bottles and "short glasses of drinks" on the bar. Corporal Young testified that he observed Emery Horvatich seated at the bar with an unidentified bottle of beer in front of him. Following these observations, Corporal Young knocked on the door and announced, "Hermitage Police." At that time, Corporal Young heard Tabitha Myers-Clark shout, "Clear the drinks off the bar." The individuals inside then promptly cleared the bottles and glasses from the bar prior to Corporal Young's entry.

Licensee presented the testimony of four of the five individuals observed inside Licensee's premises. Each witness, including Tabitha Myers-Clark, Santos Velazques, Jeremy Clark and Clinton O'Brien testified that they were employed at the premises on the evening in question. The fifth individual, who was not present at the hearing to testify, was identified as Emery Horvatich. Licensee, James E. Gossler, testified that Mr. Horvatich was employed at the premises that evening.

The Liquor Code requires patrons to vacate licensed premises [47 P.S. §4-499(a)]. However, individuals "engaged in an employment related activity" are not patrons within the meaning of the Liquor Code.

Section 1-102 of the Liquor Code defines a patron as "an individual who purchases food, nonalcoholic beverages, liquor alcohol or malt or brewed beverages for a consideration from a licensee or any person on the licensed premises **except those actually engaged in an employment related activity.**" (Emphasis added)

In the opinion of this Court, the evidence establishes that on February 17, 2012 at 3:06 a.m., Licensee's premises was closed for the evening and that the five individuals present were

employees. Moreover, this Court accepts the testimony of Licensee's witnesses that they were responsible in some manner for the cleaning and closure of the premises that evening. The evidence demonstrates that one or more of Licensee's employees were in possession of alcoholic beverages at the bar at 3:06 a.m. which is sufficient to establish violation of the Liquor Code. In addition, the observations of Corporal Young coupled with the aforementioned statements and activities observed prior to permitting Corporal Young to enter is sufficient for this Court to find that Licensee's employees were not actually engaged in employment related activities.

CONCLUSIONS OF LAW:

1. On February 17, 2012, Licensee, by its servants, agents or employees, failed to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages, in violation of Section 499(a) of the Liquor Code, [47 P.S. §4-499(a)].

2. On February 17, 2012, Licensee, by its servants, agents or employees, permitted patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m. in violation of Section 499(a) of the Liquor Code, [47 P.S. § 4-499(a)].

PRIOR RECORD:

Licensee has been licensed since September 10, 2002, and has had four (4) violations.

IN RE:

Citation No. 04-1415. Fine \$100.00. Fine not paid and license suspended one day and thereafter until fine paid.

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

Citation No. 04-1513. Fine \$150.00.

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

Citation No. 06-0009. Fine \$1,200.00.

1. Sales to a minor.

Citation No. 06-1877. Fine \$1,100.00.

1. Sales to a visibly intoxicated person.

Georgia's City Lights, Inc.,  
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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 \$50.00 or more than \$1,000.00 or both for violations of these types found in this case.

In consideration of the fact that counts one and two of this citation arose out of the same factual circumstances, they shall be deemed to have merged solely for the purpose of the imposition of a penalty.

This Court shall take into consideration in the imposition of a penalty that Licensee's premises was closed to the public after 3:00 a.m. on February 17, 2012 during the investigation conducted by the Hermitage Police Department and that the individuals identified inside the premises were Licensee's employees.

For the foregoing reasons, a penalty shall be imposed in the amount of \$250.00.

ORDER:

THEREFORE, it is hereby ordered that Georgia's City Lights, Inc., t/a Georgia's City Lights, License Number R-AP-5128, pay a fine of \$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.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 25<sup>TH</sup> day of February, 2014.



Roderick Frisk, J.

clm

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE 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.**

Georgia's City Lights, Inc.,  
t/a Georgia's City Lights  
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Detach Here and Return Stub with Payment

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The fine must be paid by a check drawn on the business or trust account of your attorney, who must be licensed in this Commonwealth, a treasurer's check, cashier's check, or money order. **Personal and business checks are not acceptable unless they are certified by your bank.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail, along with any required documentation (please use the Return Stub when mailing payment or write your citation number on the check).

PLCB-Office of Administrative Law Judge  
Brandywine Plaza  
2221 Paxton Church Road  
Harrisburg PA 17110-9661

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