

Mailing Date: NOV 13 2013

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-0206
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W05-452794
v.	:	
	:	
ROBERT T. LAING	:	PLCB LID No.: 17728
GLORIA J. FETTERS	:	
T/A OMAR BAR & RESTAURANT	:	
121 W. BISHOP ST.	:	PLCB License No.: R-AP-SS-16024
BELLEFONTE, PA 16823-1956	:	

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Emily L. Gustave, Esquire

LICENSEE: Robert T. Laing, Gloria J. Fetters

**BACKGROUND:**

This proceeding arises out of a citation, containing one count, that was issued on February 13, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Robert T. Laing, Gloria J. Fetters (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 January 6, 2013.

I presided at an evidentiary hearing on October 2, 2013 at 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 October 31, 2012 and completed it on January 7, 2013. (N.T. 11)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on January 24, 2013. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)

3. On January 6, 2013, two Bureau Enforcement Officers entered the premises in an undercover capacity, at approximately 12:40 a.m. (N.T. 15-16)

4. The Officers noticed a female patron who had her arms draped around another female as she departed the restroom. The targeted customer (TC) appeared as if she was leaning on the other patron. When the TC reached the bar counter, she grabbed hold of the top. It appeared to the Officers that she was steadying herself. (N.T. 21-35)

5. The TC stepped on a footstool, placing all of her weight on top of the bar to get the attention of the bartender. The TC received a twelve-ounce bottle of beer. (N.T. 35-39)

6. At 12:55 a.m., the bartender announced last call. The TC made her way to the bar. TC displayed a staggered gait. One Officer approached the bar in order to hear whatever transpired between the TC and the bartender. The Officer noted the TC's eyes were glassy and bloodshot. The TC yelled: "I'm so fucking drunk!" (N.T. 49-55)

7. The bartender then sold two shots of liquor, one for a male patron and one for the TC. (N.T. 55-58)

**CONCLUSION(S) OF LAW:**

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. I sustain the violation as charged.

**DISCUSSION:**

I find the Officers assessment of the condition of the patron to be worthy of significant weight particularly when the TC offered the statement that she was drunk.<sup>1</sup>

**PRIOR ADJUDICATION HISTORY:**

Licensee has been licensed since September 26, 1980, and has had nine prior Adjudications since July 1, 1987, the date the Office of Administrative Law Judge was established.

In Re Citation No.: 88-0357. Fine \$600.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on your licensed premises (poker machines).

In Re Citation No.: 90-0899. Fine \$450.00 and 3 days suspension.

Not a bona fide restaurant in that it was not habitually and principally used for the purpose of providing food for the public and there was an insufficient supply of food, dishes, silverware and cooking utensils.

In Re Citation No.: 91-2153. Fine \$1,000.00 and 3 days suspension.

Sales to a minor on July 19, 1991.

In Re Citation No.: 92-0139. Fine \$250.00 and 3 days suspension.

1. Installed more than one window or doorway sign advertising the products of one manufacturer on November 25, December 11, 22 and 27, 1991.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time on December 22, 1991.

In Re Citation No.: 96-2827. Fine \$1,100.00.

1. Sales to a minor on November 14, 1996.
2. Sold malt or brewed beverages in excess of 192 fluid ounces for consumption off premises on November 14, 1996.

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<sup>1</sup> That declaration is an exception to the rule prohibiting inadmissible hearsay as the declarant was expressing her then physical condition.

In Re Citation No.: 01-0083. Fine \$1,000.00.  
Sales to visibly intoxicated persons on November 10, 2000.

In Re Citation No.: 02-1766. Fine \$200.00.  
Sold malt or brewed beverages in excess of 192 fluid  
ounces for consumption off premises on March 23, 2002.

In Re Citation No.: 04-1291. Fine \$500.00.  
Not a bona fide restaurant in that food items were  
insufficient and you failed to provide food upon request on  
June 19 and July 7, 2004.

In Re Citation No.: 08-2677. Fine \$1,250.00 and RAMP training  
mandated.  
Sales to a visibly intoxicated person on October 17, 2008.

**PENALTY ASSESSMENT CRITERIA:**

***Mandatory Requirement(s)***

Liquor Code Section 471 [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.

***Discretionary Component(s)***

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

**ORDER:**

***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.

***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.

***Requirement to Contact the BAE of the Pennsylvania Liquor Control Board***

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.

***Consequence of Noncompliance with RAMP***

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 24<sup>TH</sup> day of October, 2013.



Felix Thau, A.L.J.

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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 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