

Mailing Date: FEB 20 2014

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-0580
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-455074
v.	:	
	:	
TOMMYBOYS, INC.	:	PLCB LID No.: 61444
T/A TOMMYBOYS	:	
14 N. MARKET ST.	:	
NANTICOKE, PA 18634-1411	:	PLCB License No.: R-AP-SS-15029

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Adeline Smith, Sole Corporate Officer, Stockholder, and Manager

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on March 22, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Tommyboys, Inc. (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 February 13, 2013.

I presided at an evidentiary hearing on January 10, 2014 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on December 31, 2012 and completed it on February 17, 2013. (N.T. 25)¹

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on February 28, 2013. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 19)

3. On February 12, 2013, an undercover Bureau Enforcement Officer entered the premises at about 11:30 p.m. About eight minutes later, the Officer's attention was drawn to a customer who was dancing on the dance floor. The customer danced wildly and uncontrollably while yelling for no apparent reason. He had no partner. The customer continued dancing until 11:55 p.m. (N.T. 25-27)

4. At 11:59 p.m., the customer raised a mug of beer previously served him as if to make a toast but made none. He kissed the mug and finished the beer. Shortly after midnight, on February 13, 2013, the bartender served the customer a draft beer. Several minutes later, the customer and the bartender engaged in a conversation which the Officer was able to overhear as the band was on break. The Officer heard the customer talking but he was making no sense. The customer stammered. His sentences were incoherent. (N.T. 27-31)

5. The band began playing again at about 12:10 a.m. The customer went to the dance floor. While the customer danced the second time, the Officer noted that the customer was dancing wildly and boisterously. The customer returned to his position at the bar. His gait was staggered. At 12:15 p.m., the customer received a second service of draft beer. (N.T. 32-38)

¹ The record contains a transposed incorrect date of December 13, 2012. (N.T. 25)

6. The customer began dancing again at 12:43 a.m., he almost fell on the dance floor. At 12:45 p.m., the customer returned to the bar in a staggering and unsteady manner. When he went to sit on the barstool, he almost fell. He grabbed the bar to steady himself. He drank some of the beer that had been previously served him. At 12:46 a.m., the customer made his way to the restroom, once again swaying. He was unsteady and staggering as he returned from the restroom to the bar. At 12:47 a.m., the customer attempted to procure money but had great difficulty in doing so. The customer received a third service of beer from the bartender. (N.T. 43-50)

CONCLUSION(S) OF LAW:

I sustain the violation as charged.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since July 24, 2009, and has the following Adjudication history:

In Re Citation No.: 10-0474C. Fine \$1,250.00 and RAMP training mandated.

Sales to a minor on February 23, 2010.

In Re Citation No.: 10-1472. Fine \$350.00.

Possessed or operated gambling devices or permitted gambling on the licensed premises (cards) on June 23, 2010.

In Re Citation No.: 12-1492. Fine \$250.00.

Refilled liquor bottles on September 12, 2012.

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.

This violation, in combination with In Re Citation No.: 10-0474C, and In Re Citation No.: 10-1472, is the third within four years of Liquor Code Section 493(1), as it relates to selling alcoholic beverages to a minor and the Crimes Code. In accordance with Liquor Code Section 471(c) [47 P.S. §4-471(c)], I am required to impose, at least, a suspension or revocation.

Further, Liquor Code Section 471.1 [47 P.S. §4-471.1], relating to responsible alcohol management, mandates that Licensee participate in the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program (RAMP), since this is Licensee's first violation as herein found.

Discretionary Component(s)

Accordingly, I impose a \$1,000.00 fine and a one day suspension.

ORDER:

Imposition of Fine

Licensee must pay a \$1,000.00 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.

Suspension Length and Date(s)

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the license, for one day, beginning Monday, March 24, 2014, 7:00 a.m., and ending Tuesday, March 25, 2014, 7:00 a.m.

Instructions to Post Notice of Suspension Placard

Licensee shall post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Monday, March, 2014, 7:00 a.m. The Suspension Placard may not be removed until the suspension ends.

Consequence of Failing to Comply With This Order

In addition to any other consequence at law, if Licensee does not comply with all conditions herein, the Bureau may issue an additional citation alleging Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

Mandatory 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; email address: 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 Mandatory 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 12TH day of February, 2014.



Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. If you have not already done so, it may be prudent for you 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. The full requirements for an appeal can be found in 47 P.S. §4-471.

Detach Here and Return Stub with Payment

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