

Mailing Date: FEB 06 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1163
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W09-454856
	:	
KAMA ENTERPRISES INC.	:	
T/A EAGLE HOTEL	:	PLCB LID - 41037
201-203 E. BROAD ST.	:	
QUAKERTOWN PA 18951-1701	:	
	:	PLCB License No. H-AP-SS-492
	:	
BUCKS COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ROY HARKAVY, ESQ.

FOR THE LICENSEE:

STEPHEN A. SHELLY, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on June 7, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Kama Enterprises, Inc., t/a Eagle Hotel, License Number H-AP-SS-492 (hereinafter "Licensee").

Kama Enterprises, Inc.
t/a Eagle Hotel
In Re: Citation No. 13-1163

An Administrative hearing was held on Thursday, January 30, 2014, pursuant to requisite and appropriate hearing notice. The parties stipulated to the service and receipt of the notice letter and the citation.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on April 5, 2013, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron.

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. In conjunction with that investigation, he visited the licensed premises on Friday, April 5, 2013. He was accompanied by another officer. The officer entered the licensed premises in an undercover capacity at approximately 12:21 a.m. (N.T. 6-7).

2. When he and the other officer walked into the establishment, he took a seat at the bar, where there were approximately twelve patrons, and a female bartender, heard to be called Amy (N.T. 7).

3. Shortly after entering the premises at approximately 12:25 a.m., the investigating officer observed the bartender speaking with a patron on the north side of the bar. The officer described the patron as being a white male, approximately forty years of age, weighing approximately 160 pounds. The patron was wearing a blue hooded sweatshirt and baseball hat. The officer heard the other patrons refer to the patron as Kevin (N.T. 7-8).

4. The officer identified an individual in the Courtroom as an intoxicated patron whom he had seen on the premises during his investigation (N.T. 8-9).

5. The officer overheard the bartender ask Kevin if he was okay and how he was getting home that night. The officer heard Kevin reply with slurred words. The officer indicated he never gave the bartender "a straight answer" (N.T. 8-9).

6. Shortly after the bartender questioned Kevin with regard to whether he was okay and how he was getting home, she gave him a bag of chips from behind the bar. Kevin ate the chips. At approximately 12:38 a.m., Kevin took the now empty chip bag and tossed it on the floor behind the bar. The bartender then picked up the empty bag (N.T. 9).

7. The officer was approximately fifteen feet from Kevin. He indicated Kevin was speaking loudly, however, the officer could not understand his slurred speech (N.T. 9-10).

8. The officer eventually heard Kevin trying to tell the bartender that he was walking home, but again his speech was very slurred. At approximately 12:41 a.m., the patron was heard to be talking to himself and yelling out loud. Again, the patron's speech was slurred (N.T. 9-10).

9. The officer observed the patron, Kevin, staring at an empty space on the bar. At approximately 12:43 a.m., Kevin walked towards the jukebox, which was directly in front of the officers (N.T. 10).

10. As he approached the jukebox, the officer observed that his gait was staggered and he had a hard time when touching the jukebox. Kevin had difficulty with eye/hand coordination. When he returned to his seat at 12:46 a.m., he was swaying from side to side as he walked back to his seat (N.T. 10).

11. After Kevin returned to his seat at approximately 12:51 a.m., he started pounding his fists on the bar multiple times. Kevin rambled incoherently. The bartender attempted to engage him in conversation. At 12:55 a.m., the bartender gave the patron water and attempted to talk to him. At approximately 1:00 a.m., the bartender came over to a patron that was seated to the officer's right at the bar and asked this patron how Kevin was getting home. The male patron stated that he thought Kevin lived a few blocks away. Kevin then yelled at the bartender, who then returned to Kevin. Kevin yelled at her asking, "If I get any drunker will my eyes get redder?" (N.T. 11-12).

12. At approximately 1:07 a.m., the patron walked back to the jukebox. He was using his outstretched hands to balance himself. At approximately 1:12 a.m., Kevin asked the bartender for another pitcher of beer (N.T. 12).

13. The bartender filled a small sized pitcher with Victoria Hot Devil, a draft beer, walked over to Kevin and placed the pitcher and a glass in front of him (N.T. 12-13).

14. At approximately 1:18 a.m., Kevin went back to the jukebox, again he swayed from side to side as he walked (N.T. 13).

15. Kevin walked back to the jukebox and at approximately 1:27 a.m., he began rambling regarding an unknown subject matter. Kevin had slurred speech and another patron yelled at him to stop yelling and rambling. At approximately 1:45 a.m., Kevin got up to use the restroom and as he walked to the restroom, he walked into the doorjamb (N.T. 14).

16. At approximately 1:47 a.m. on his way back to his seat, he walked into the cigarette machine and used the bar to regain his balance and then proceeded back to his seat. The officer observed Kevin drink some of the beer, which had been served to him at approximately 1:12 a.m. (N.T. 13-14).

17. When the officer arrived, Kevin had a pitcher of beer in front of him, which he finished during the officer's visit. The bartender then gave him a pitcher of water. She then dumped out the pitcher of water and served Kevin beer in the same container. He indicated that Kevin, in addition to the potato chips, may have eaten some pizza while on the premises. No charges were brought against Kevin (N.T. 17).

18. Kevin left the premises with another patron, who appeared to be sober; they walked down the street. The officer left the premises at approximately 2:30 a.m. He did not see Kevin outside (N.T. 17-18).

19. A second officer from the Bureau of Enforcement, who was present with the lead investigating officer, entered the premises at approximately 12:25 a.m. The bartender was paying particular attention to Kevin. The officer indicated that Kevin was consuming alcoholic beverages when the officers arrived (N.T. 20-21).

20. Between 1:00 and 1:10 a.m., the two officers were seated at the bar, along with another patron, who was two or three barstools away from them. The bartender came over and talked to the patron asking if the patron knew Kevin, if the patron knew where Kevin lived and if Kevin was driving home. The patron stated that Kevin did live on Franklin Street, a couple of blocks away, and that he was probably walking. At that time, Kevin was talking very loudly and with very slurred speech. This officer also heard Kevin ask, "If I get any drunker, will my eyes get any redder?" (N.T. 21-22).

21. At approximately 1:07 a.m., Kevin got up and went to the jukebox. While he was walking to the jukebox, the officer noticed that he had staggered gait. Kevin held his arms out for balance while walking. At 1:12 a.m., the bartender served him another beer taking money from the bar in front of him (N.T. 22-23).

22. After drinking the beer, Kevin began yelling something with regard to Pennsylvania. Another patron yelled "Shut up Kevin" (N.T. 23).

23. At 1:45 a.m., Kevin got up to go to the bathroom. The officer had to turn around slightly to watch him. He also saw Kevin walk into the door jamb before entering the bathroom. Approximately two or three minutes later, Kevin left the bathroom and walked into the cigarette machine that was directly in front of him and then had to hold onto the bar to stabilize himself (N.T. 23-24).

24. Kevin then took a seat. At approximately 2:05 a.m., Kevin was observed to be sleeping on the bar, with his head in his hand. At 2:15 a.m., Kevin got up to leave and another patron indicated he was going to walk Kevin home (N.T. 24).

25. The officer walked outside to be certain that Kevin was not getting into a vehicle. Kevin walked with another patron who appeared to be sober (N.T. 24-25).

26. The Enforcement officers sat in their vehicle until approximately 2:30-2:35 a.m. to insure that the patrons vacated the premises in a timely fashion (N.T. 25).

27. While walking down Broad Street, Kevin did not fall down, but staggered in the same way he had inside the premises (N.T. 26).

28. A.H., the bartender, testified that she is employed as a bartender at the licensed premises and that she was so employed on April 5, 2013. She has been employed at the premises for twenty-two years and has been a bartender since she was eighteen years of age (N.T. 28).

29. A.H. indicated that she has participated in the Responsible Alcoholic Management Program on several occasions (N.T. 28-29).

30. The bartender indicated that Kevin is a regular patron and has been for approximately two years. She recalled when the officers entered and that Kevin had a small pitcher of beer in front of him. The bartender indicated that she gave Kevin a bag of potato chips, made him a pizza and gave him ice water to drink (N.T. 30-32).

31. The bartender served him a small pitcher of beer, took a twenty dollar bill and charged him for the pint and the pizza at the same time. She put his change in front of him (N.T. 36-37).

32. V.H. indicated that he was working on April 5, 2013 as a bar back and described Kevin as a regular customer, as did the bartender who stated that Kevin had some problem with his leg (N.T. 43).

33. K.L. testified that he is the person who was described as Kevin and that he is 6'3" tall and not 5'9" tall, as the officer stated. He is 41 years of age. On April 5, 2013, he was at the licensed premises having come there from work and arrived around 10:30 or 11:00 p.m. He indicated that the premises is a two minute walk from his house and that he sometimes goes there for dinner. He confirmed that he did have a bag of chips and a pizza to eat while on the licensed premises (N.T. 44-46).

34. K.C. indicated that before he had the pitcher of beer at 12:01 a.m., he had been drinking water. He indicated that he had issues with the jukebox and he has trouble walking from juvenile rheumatoid arthritis and joint damage to his body. He stated that he has limited motion with his neck (N.T. 46-47).

CONCLUSIONS OF LAW:

On April 5, 2013, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) visibly intoxicated patron, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since September 8, 1997, and has a record of prior violations as follows:

Kama Enterprises, Inc.
t/a Eagle Hotel
In Re: Citation No. 13-1163

In Re:

Citation No. 98-1101. \$1,000.00 fine.

1. Sunday sales after 2:00 a.m.
2. Sales to a minor (Withdrawn by Bureau).

Citation No. 99-1347. \$450.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

Citation No. 12-0946. \$1,100.00 fine.

1. Sales between 2:00 a.m. and 7:00 a.m.
April 6, 2012.

DISCUSSION:

Counsel indicated that this was an issue of credibility. The Court agrees and finds that the Enforcement officers were in fact credible. The witness had several explanations for the patron's behavior; however, the behavior cannot be wholly explained by his physical disability. The bartender clearly knew and understood that Kevin was intoxicated, but as in other matters that have come before the Court, the bartender reasoned that if Kevin lived in close proximity and was walking home rather than driving home, it was not essential that she "flag" him. There is no exception for regular customers, pedestrians or those living close to the premises. The red eyes, the boisterous talking, the putting out of hands to keep his balance, walking into a cigarette machine and doorjamb, indicated that Kevin was intoxicated.

The bartender utilized her learned skills, serving Kevin food and giving him water to allow him an opportunity to get sober. These were all good measures. But at the point that she served Kevin, he was visibly intoxicated and should not have been served any alcoholic beverages, for any reason. She did make inquiries as to how he was getting home, she did appear to be concerned and gave him food. Fortunately, he did have someone who was kind enough to escort him home. He should not have been allowed to continue drinking in that establishment after exhibiting signs of being intoxicated.

Licensee has a prior history for sales between the hours of 2:00 and 7:00 a.m., but no priors relating to the current offense. Under the circumstances, a monetary penalty of \$1,000.00 shall be imposed.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. Section 4-471, prescribes a penalty of suspension or revocation of license or imposition of 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.

Kama Enterprises, Inc.
t/a Eagle Hotel
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That Section further provides for mandatory compliance with Liquor Code Section 471.1, 47 P.S. Section 4-471, 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.

Accordingly, we issue the following

ORDER:

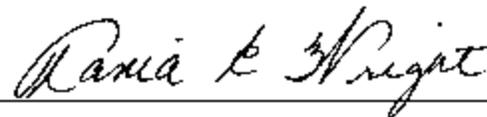
THEREFORE, it is hereby Ordered that Licensee, Kama Enterprises, Inc., t/a Eagle Hotel, License Number H-AP-SS-492, pay a fine of One Thousand Dollars (\$1,000.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from 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. The Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No.: 1-866-275-8237; Web Site: www.lcb.state.pa.us) within thirty (30) days of the mailing date of this Adjudication in order to receive assistance in the compliance process. Licensee must receive Certification within ninety (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. The Bureau of Liquor Control Enforcement is further directed to monitor compliance with this Adjudication.

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. Section 4-471(d).

Jurisdiction of this matter is retained.

Dated this 22ND day of January, 2015.



Tania E. Wright, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.

Kama Enterprises, Inc.
t/a Eagle Hotel
In Re: Citation No. 13-1163

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 the Office of the Chief Counsel of the Pennsylvania Liquor Control Board at 717-783-9454.

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Detach Here and Return Stub with Payment - Note Citation Number on Check

The fine must be paid by Treasurer's Check, Cashier's Check, Money Order or a check drawn on the account of an attorney, who must be licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless they are certified by your bank.** If you are paying by guaranteed check, please make it payable to the Commonwealth of Pennsylvania and mail, along with any required documentation, to:

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

Credit/Debit Cards may be used: visit www.lcb.state.pa.us and look under LEGAL/Office of ALJ for instructions.

In Re: Citation No. 13-1163
Kama Enterprises, Inc.