

Mailing Date: APR 24 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1438C
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-451869
	:	
D F MONASTRA INC.	:	
110 S. MACDADE BLVD.	:	PLCB LID - 58310
GLENOLDEN, PA 19036-1727	:	
	:	
	:	PLCB License No. R-AP-SS-19887
	:	
DELAWARE COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ERIK S. SHMUKLER, ESQ.

FOR THE LICENSEE:

JOHN J. McCREESH, III, ESQ.

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on July 23, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against D F Monastra, Inc., License Number R-AP-SS-19887 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, September 17, 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 contains four counts.

The first count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16), in that on December 21, 2012 and February 22, 2013, Licensee, by its servants, agents or employees, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m.

The second count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on December 21, 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 third count charges Licensee with violation of Section 499(a) of the Liquor Code, 47 P.S. §4-499(a), in that on December 21, 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.

The fourth count charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on May 2, 2013, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) minor, nineteen (19) years of age.

COUNT NOS. 1, 2 AND 3

FINDINGS OF FACT:

1. An officer from the Bureau of Enforcement conducted an investigation of the licensed premises. The officer made a first visit to the premises on October 17, 2012. There were approximately ten patrons at the premises. The officer found no violations (N.T. 7).

2. The officer again visited the licensed premises on Saturday, November 17, 2012 at approximately 11:00 p.m. From 11:00 p.m. to 12:15 a.m., the premises was open and operating. There were approximately forty patrons inside. The officer observed no violations (N.T. 7-8).

3. On Friday, December 21, 2012, the officer visited the premises at 11:30 p.m. He observed approximately twenty-five to thirty patrons. She observed a white non-Hispanic male bartender who was wearing an Eagles hat and a shirt with the restaurant's insignia on it. The bartender also was wearing a "gaged earring." No last call was given, however, at 2:00 a.m., the back door which led to the parking lot was locked. There were approximately ten patrons remaining on the premises (N.T. 8-9).

4. At approximately 2:10 a.m., a patron asked for two beers. He was told that he could not have them in that the register was closed. However, at 2:12 a.m., the bartender served two shots of Jamison whiskey to a patron and at 2:24 a.m., he served shots of tequila to two females. At 2:25 a.m., a patron went behind the bar and was taking pictures of the two females who had been served the tequila (N.T. 9).

5. The officer indicated that she kept track of time using a synchronized cell phone with KYW News radio. She also indicated she compared it to a clock located in the bar (N.T. 9-10).

6. The officer left the premises at approximately 2:40 a.m. through a side door. The officer sat in her car until 2:55 a.m. and observed two patrons leave the premises during that time (N.T. 10-11).

7. The officer observed patrons served alcoholic beverages while on the premises prior to the authorized time for the cessation of service of alcoholic beverages (N.T. 11).

8. On January 13, 2013, the officer went to the licensed premises at approximately 2:40 a.m. and the premises was closed (N.T. 11-12).

9. On Friday, February 22, 2013 at 1:35 a.m., the officer went to the licensed premises. There were approximately fifteen patrons present. The officer observed a white non-Hispanic male bartender. There was no last call made. At 2:09 a.m., one patron was served Captain Morgan by the bartender. The officer heard that another person had been served earlier in the evening (N.T. 12-13).

10. There were six patrons remaining on the premises. Between 2:10 and 2:15 a.m., a patron asked for a bottle of beer and was being served by the bartender when an individual stated to the bartender that that was unacceptable and that there would be no sales after 2:00 a.m. The bartender and that individual whispered to one another. The officer left shortly afterwards at approximately 2:15 a.m. (N.T. 13).

11. The officer conducted a routine inspection of the licensed premises on May 16, 2013 (N.T. 13-14).

CONCLUSIONS OF LAW:

Count No. 1 - On December 21, 2012 and February 22, 2013, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages between 2:00 a.m. and 7:00 a.m., in violation of Sections 406(a)(2) and 493(16) of the Liquor Code, 47 P.S. §§4-406(a)(2) and 4-493(16).

Count No. 2 - On December 21, 2012, Licensee, by its servants, agents or employes, 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).

Count No. 3 - On December 21, 2012, Licensee, by its servants, agents or employes, 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).

Count No. 4 - There is insufficient evidence to conclude that on May 2, 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) minor, nineteen (19) years of age, in violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1).

PRIOR RECORD:

Licensee has been licensed since July 3, 2007, and has a record of prior violations as follows:

In Re:

Citation No. 09-1249. \$4,400.00 fine.

1. Used loudspeakers or devices whereby music could be heard outside.
November 8 and 9, 2008.
2. Sales to a visibly intoxicated person.
February 27, 2009.
3. Sales to minors.
February 21 and March 13, 2009.
4. Minors frequenting.
February 21 and March 13, 2009.
5. Fortified, adulterated and/or contaminated liquor.
March 13, 2009.
6. Sold alcoholic beverages on credit in contravention of the Liquor Code and Title 40 of the Pennsylvania Code.
November 13, 2008, February 18, 19, 22 and 26, 2009.
7. Failed to display documentary evidence that the premises meets all sanitary requirements for a public eating place.
March 13, 2009.
8. Possessed or operated gambling devices or permitted gambling on the licensed premises.
March 13, 2009.
9. Sales between 2:00 a.m. and 7:00 a.m.
February 18, 2009.

10. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
January 25 and February 18, 2009.
11. Sales on Sunday between 2:00 a.m. and 11:00 a.m.
January 25, 2009.

Citation No. 10-1178. \$1,500.00 fine.

1. Used loudspeakers or devices whereby the sound of music could be heard outside.
April 3, 2010.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
April 24, 2010.
3. Permitted patrons to possess or remove alcoholic beverages after 2:30 a.m.
April 24, 2010.

Citation No. 10-2433X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
September 28, 2010.

DISCUSSION:

The corporate president testified that the premises clock is approximately ten minutes fast. However, the officer testified that she used her cell phone and that it was consistent with the time given by KYW radio. She stated credibly that the clock was consistent with the time on her cell phone. The officer observed sales of after hours on two occasions, December 21, 2012 and February 22, 2013.

Under the circumstances, the Court finds the evidence sufficient to find that the Licensee sold or gave liquor and/or malt beverages between 2:00 a.m. and 7:00 a.m. and failed to have the patrons vacate the premises. The Bureau did not proceed with regard to the charge of sales to a minor.

After a review of the prior history, which includes previous charges for selling between 2:00 a.m. and 7:00 a.m. and permitting patrons to remain on the premises in possession of alcoholic beverages after 2:30 a.m., monetary penalties 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 \$50.00 or more than \$1,000.00, or both, for violations of the type found in Count Nos. 2 and 3 of this case.

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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 Count Nos. 1 of this case.

Therefore, penalties shall be assessed as follows:

Count No. 1 - \$1,500.00.
Count No. 2 - \$350.00.
Count No. 3 - \$350.00.
Count No. 4 - DISMISSED.

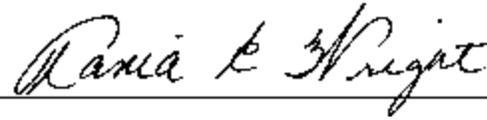
Accordingly, we issue the following

ORDER:

THEREFORE, it is hereby Ordered that Licensee, D F Monastra, Inc., License Number R-AP-SS-19887, pay a fine of Two Thousand Two Hundred Dollars (\$2,200.00) 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.

Jurisdiction of this matter is retained.

Dated this 22ND day of APRIL, 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.

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.

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