

Mailing Date: MAR 19 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-1598
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-462001
	:	
JERRY'S BAR INC.	:	
T/A JERRY'S BAR	:	PLCB LID - 12411
707 BALTIMORE AVENUE	:	
EAST LANSDOWNE PA 19050-2603	:	
	:	PLCB License No. R-AP-SS-6814
	:	
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 August 20, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against Jerry's Bar, Inc., t/a Jerry's Bar, License Number R-AP-SS-6814 (hereinafter "Licensee").

An Administrative hearing was held on Wednesday, April 2, 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 May 23, 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 entering the premises about 11:00 p.m. on Thursday, May 23, 2013. The officer was originally there for an age compliance check. On that evening, his duty was to insure that the premises was safe for an underage buyer to enter. During the course of the age compliance check, no underage buyer was served (N.T. 7-9).

2. When the officer entered at approximately 11:00 p.m., there was a bartender and approximately four patrons in the premises. One patron caught the attention of the officer who was seated directly in front of him on the other side of a horseshoe shaped bar (N.T. 9-10).

3. The officer's attention was drawn to a dark complected woman with black curly hair who appeared to be of Indian descent. The officer heard her speaking on her cell phone loudly and yelling, "I need a ride home, you a--hole!" Several minutes later, an unidentified non-Hispanic male came into the bar, who was heard to be called Harry. Harry said to the female, "You're still here?" and he sat down and ordered a beverage (N.T. 10-11).

4. About 11:20 p.m., a white non-Hispanic male came into the bar and sat next to the female, who had previously been on her cell phone. They stared at one another for a time and then began arguing regarding the fact that she had been there all day (N.T. 11-12).

5. The officer noted that the female's speech was slurred. The officer indicated that she was holding onto the backs of the barstools. She went to the jukebox and had difficulty putting money into the jukebox. She walked back to her seat at the bar, but was unsteady on her feet, walking with a staggered gait. She sat back down on her barstool with her head bobbing back and forth and her eyes were partially shut (N.T. 12-13).

6. The bartender then served the female, who had been on the cell phone, one twelve-ounce Bud Light beer, placing it in front of her, and took money that had been sitting on the bar in front of the female. The bartender rang the sale up on the cash register (N.T. 12-13).

7. The officer indicated his concern for her safety and was sure that she had secured a ride before he departed the premises (N.T. 13-14).

8. The officer did not notice if the woman had an accent, but did note that her speech was slurred (N.T. 19).

9. Debra Dougherty testified that she has been tending bar at the licensed premises for two and a half years and on May 23, 2013, she recalled refusing to serve an underage patron and shortly after that, she received a letter indicating that they were in compliance. She indicated that minors do not come into the bar frequently (N.T. 23-24).

10. Debra Dougherty recognized the officer from his visit on the night of May 23, 2013. She indicated that he was seated at the bar and remembered him because she did not recognize him as a patron of the establishment (N.T. 25).

11. Ms. Dougherty indicated that she was familiar with the Indian woman who had been described as having a dark complexion. She indicated that the woman was from Trinidad and that she speaks with an accent. She has known the woman for about ten years and they lived together at one point. She indicated that it was a blizzard outside and that the woman arrived at the bar after 9:00 p.m. with her boyfriend John. John and this woman had a "spat" and he left her at the bar, coming back some time later to take her home (N.T. 25-27).

12. The bartender indicated that there is a jukebox on the premises. There are approximately five seats between the end of the bar and the jukebox and that the stools are backless (N.T. 28-29).

13. The bartender did not believe that the woman was drunk and indicated that she served her no more than three beers and that she did not touch the third beer over the course of a couple of hours (N.T. 29-30).

14. The bartender indicated that she remained with her until about 12:00 a.m., when she unlocked the bar and let the boyfriend John in, who came to pick her up (N.T. 31-32).

15. Harry Smith testified that he has been going to the bar since 1984 and that he is retired. He recalled on May 23 an underage teenager coming in to the premises and the bartender carding him. He also remembers a stranger sitting across the bar (N.T. 32-34).

16. Harry Smith indicated that he has been going to the bar for thirty years and they did not see many strangers in the bar. They were mostly people from the neighborhood (N.T. 35).

17. He indicated that the woman who the officer referred to as having a dark complexion had an accent. He remembers that she had an argument with her boyfriend on that night. He also indicated that the barstools are backless. He was seated and the stools they were sitting approximately four feet from the jukebox (N.T. 36-38 and Exhibits L-1 and L-2).

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18. Jerome McArdle is president of the premises. He indicated that the barstools have been there approximately seven years. He described the stools as being approximately ten feet from the jukebox. He also described the stools as backless (N.T. 39-41 and Exhibits L-1 and L-2).

19. Petal Mohamed stated that she went to the bar with her boyfriend and that he left her there. They had a fight on the phone and he came back and got her later. She indicated that prior to that, they had been to dinner and arrived at the bar at approximately 9:30 p.m. She indicated that she had approximately two and a half to three beers, but no more than that. She indicated that she was talking fast and has an accent. She does not believe that she was drunk. She has known the bartender for ten to fifteen years. She indicated that there are no backs on the barstools (N.T. 43-45).

20. She goes to Jerry's Bar once or twice a week and has been going there for five or six years (N.T. 46).

CONCLUSIONS OF LAW:

On May 23, 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 February 2, 1984, and since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, has a record of prior violations as follows:

In Re:

Citation No. 95-1753. \$400.00 fine.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises.

Citation No. 01-1927. \$100.00 fine.

1. Purchased malt or brewed beverages on credit.

Citation No. 10-1126C. \$1,250.00 fine and R.A.M.P. training mandated.

1. Sales to a minor.
April 30, 2010.

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Citation No. 12-1432. \$500.00 fine.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises.
July 24, 2012.
2. Supplied false information on application for Restaurant Liquor License.
October 5, 2011.

DISCUSSION:

Even if the officer was mistaken as to whether or not there were backs on the barstools, the Court found the officer's testimony sufficient in substance and credibility to sustain the violation. He described the woman as being boisterous with slurred speech, a staggering gait and she had difficulty putting money in the jukebox. He also indicated that her head was bobbing up and down as she proceeded to the bar. She was only served one drink in the officer's presence. However, she was a regular customer of the bar.

At times, Licensees may relax the rules for those they consider regular customers or customers whom they feel will not be a danger to themselves or others when leaving the premises. Nevertheless, the woman did show visible signs of intoxication that should have been as apparent to the bartender, as they were to the officer. *Ashman v. P.L.C.B.*, 542 A.2d 217 (Pa. Cmwlth. 1988). (Testimony of Enforcement officer was sufficient to establish that Licensee served a visibly intoxicated patron, where officer testified that patron had glassy eyes, slurred speech and difficulty walking.) She was, in fact, served a beer while intoxicated. The officer expressed concern for her safety and remained on the premises until he assured himself that she had a ride home.

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.

Section 471(c) of the Liquor Code, 47 P.S. Section 4-471(c), also requires that where, as here, the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code, 47 P.S. Section 4-471(b), and/or the Crimes Code, within a four year period, the penalty include license revocation or suspension.

Accordingly, we issue the following

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ORDER:

THEREFORE, it is hereby Ordered that the Restaurant Liquor License of Jerry's Bar, Inc., t/a Jerry's Bar, License Number R-AP-SS-6814 (including all permits and Licensee Discount Card), be suspended for a period of one (1) day **BEGINNING** at 7:00 a.m. on Monday, May 18, 2015 and **ENDING** at 7:00 a.m. on Tuesday, May 19, 2015.

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).

Licensee is directed on Monday, May 18, 2015 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

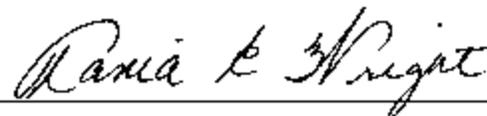
Licensee is advised if a replacement placard is needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine and Good Spirits Stores.

The "Bureau of Enforcement" is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

The Licensee is authorized on Tuesday, May 19, 2015 at 7:00 a.m. to remove the placard of suspension and return the license to its original wall location.

Jurisdiction of this matter is retained.

Dated this 12TH day of MARCH, 2015.



Tania E. Wright, J.

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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.

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