

Mailing Date: MAY 28 2014

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

PENNSYLVANIA STATE	:	In re Citation No. 13-1956
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W01-465813
	:	
v.	:	PLCB LID No. 59329
	:	
PUBLIC SPORTS BAR, LLC	:	PLCB License No. R-AP-SS-13708
READING TERMINAL HEADHOUSE	:	
FILBERT STREET ARCADE SPACE 107	:	
PHILADELPHIA, PA 19107	:	

JUDGE SHENKLE  
BLCE COUNSEL: Erik S. Shmukler, Esq.  
LICENSEE COUNSEL: Edward B. McHugh, Esq.

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 24, 2013. The citation alleges that Licensee violated §493(1) of the Liquor Code, 47 P.S. §4-493(1), on August 7, 2013, by selling, furnishing and/or giving or permitting such sale, furnishing or giving of alcoholic beverages to one visibly intoxicated patron.

A hearing was held on April 10, 2014, in Plymouth Meeting , Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

**FINDINGS OF FACT:**

1. On August 7, 2013, liquor enforcement officers visited the licensed premises at about 1:30 p.m. and sat at the bar. There were three men seated ten to twelve feet away who were being loud, laughing and talking, arguing playfully. There were no other patrons seated at the bar, and no more than six in the entire establishment. Making casual conversation with one of the two bartenders, the officers remarked that the group of three were “coming across as being basically drunks in the afternoon.” She replied, “yeah, those three are train wrecks.” (N.T. 5-9).

2. After that conversation, one of the men in the group of three stood up and started “slap boxing” with another one of them, slapping each other very hard in the face. When the man stood up he was unsteady, but caught himself so that he did not fall. While slap boxing, he was wobbly on his feet. After he stopped slap boxing, he began to make loud animal noises. He then sat down abruptly and laid his head on the bar (N.T. 9-14).

3. The man who was sitting down the whole time ordered draft beer from one of the bartenders. She poured a glass from one of the taps. The man who had stood got up again and wobbled towards the bathroom. He remained upright but walked unsteadily. The man who had

been sitting down received a telephone call, and spoke on the phone loudly and with slurred speech. This patron attempted to purchase another draft beer, but the bartender said no. He asked for his tab, which she gave to him. He pulled out his wallet and handled it clumsily, almost dropping it. After paying, he asked if he could finish his drink and the bartender said yes (N.T. 14-17).

4. During the one hour and fifteen minutes the officers spent in the premises, they saw only one service of alcoholic beverages (N.T. 17).

5. The third member of this group behaved differently from the other two – he was not as loud and he was not being obnoxious (N.T. 18).

#### CONCLUSIONS OF LAW:

The evidence did not show that Licensee's employees served an alcoholic beverage to a person who was showing signs of visible intoxication at the time of the service.

#### DISCUSSION:

I did not find in this record any basis for a conclusion that the patron to whom draft beer was served exhibited any visible signs of intoxication prior to the purchase. His loud, obnoxious slap-boxing sparring partner – the one who stood up and wobbled his way to the bathroom – did show signs of visible intoxication, but there was no evidence that he was served an alcoholic beverage during the one hour and fifteen minute period of observation.

I considered Licensee's objection to the evidence of what the bartender said in response to the comment that the three were being drunk in the afternoon, but I have overruled it. The statement which elicited the response was said by the witness to have been made by "we," referring to both liquor enforcement officers. The ambiguity was not cleared up in cross-examination. I construe the evidence as indicating that both officers were making this point, and even if it was only the missing officer who said it, her statement is not hearsay because the truth of it is not in issue.

By the same token it should be apparent that I am not construing "yeah, those three are train wrecks" as an admission that the patrons were all drunk. There are too many other possible interpretations, because the behavior of the patrons was obnoxious without necessarily rising to the level of visible intoxication.

The three men had been regular customers of the licensed premises at lunch time for some months prior to this incident, and on the day of the incident they had finished work on the center city construction project which brought them to the area. They had been given the rest of the day off with pay. Licensee's management was aware of their behavior, and resolved to give them a little slack under the circumstances. I believe the manager and the bartenders were aware of the potential problem, and acted responsibly in averting it.

The most important factor in my decision, however, is that the officers observed only one service of one glass of beer to one member of the group of three during a period of one hour and fifteen minutes. Prior to that single glass of beer the patron to whom it was served showed no signs of intoxication, according to this evidence. When he got a phone call and spoke loudly and with slurred speech on the telephone, his state of intoxication became apparent, and Licensee's employee properly cut him off.

ORDER

THEREFORE, it is hereby ORDERED Citation No. 13-1956 is DISMISSED.

Dated this 19<sup>TH</sup> day of MAY, 2014.



David L. Shenle, J.

jb

**NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.**

**WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.**

**THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.**