

Mailing Date: AUG 29 2014

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-2037
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-465634
v.	:	
	:	
J&M SPORTS BAR, LLC	:	PLCB LID No.: 57610
T/A UNIQUE BAR & GRILL	:	
13314 MONTEREY LANE	:	
BLUE RIDGE SUMMIT, PA 17214-9727	:	PLCB License No.: R-AP-SS-18286

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: John H. Pietrzak, Esquire

FOR LICENSEE: Jeffrey S. Evans, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing one count, that was issued on October 10, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against J&M Sports Bar, LLC (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 August 2, 2013.

I presided at an evidentiary hearing on July 15, 2014 at 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on August 2, 2013 and completed it on August 6, 2013. (N.T. 9)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on September 3, 2013. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 8)

3. A Bureau Enforcement Officer conducted an undercover visit to the licensed premises on August 2, 2013. The Officer entered at 8:30 p.m. (N.T. 10-11)

4. After taking a seat at the bar, the Officer's attention was drawn to a woman who was seated immediately to the Officer's left. The woman was loud and boisterous, slurring her words. She said to the Officer: "You'll have to excuse me, I'm drunk." The customer repeated that comment several times, during the Officer's visit, in a slurred manner. (N.T. 13-14)

5. At approximately 9:00 p.m., the customer dropped a lit cigarette on the floor. She clumsily got down from the barstool to retrieve the cigarette. She was unsteady on her feet when doing so. (N.T. 15-16)

6. At 9:15 p.m. while in a visibly intoxicated condition, the bartender served the customer a mixed drink. (N.T. 17-20)

7. The Officer compared the woman's condition on the date in question to that while testifying at the hearing. The Officer noted the woman's present condition was sober as compared to her behavior on the night in question. (N.T. 112-114)

CONCLUSION(S) OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. I sustain the violation as charged.

DISCUSSION:

The critical element in this matter is the customer's assertion that she was drunk which corroborates the Officer's observation. Further, that statement is admissible for two reasons. The speaker was a witness; the statement is one of the speaker's then bodily condition.

The customer in question testified. Her recollection of the events of that evening were not particularly clear. She also testified that she was taking medications, the side effects of which and when in combination with alcohol consumption, exacerbate the effects of alcohol. (N.T. 70-99)

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since February 2, 2007, and has no prior Adjudications.

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.

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)

Considering this is Licensee's first violation in approximately seven years of operation, I impose a \$1,000.00 fine.

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.

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 19 day of August, 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 – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or a check drawn on the business or trust account of an attorney licensed in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, 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 scroll over LEGAL and then click on Office of ALJ for instructions..