

Mailing Date: MAY 26 2015

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	In Re: Citation No. 13-2065
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No. W01-467255
	:	
4936 SSP, INC.	:	
VALLEY VIEW SHOPPING CENTER	:	PLCB LID - 60140
4936 PENNELL RD.	:	
ASTON TWP.	:	
ASTON, PA 19014-1867	:	PLCB License No. R-AP-SS-15465
	:	
DELAWARE COUNTY	:	

APPEARANCES:

FOR THE BUREAU OF ENFORCEMENT:

ANDREW R. BRITT, ESQ.

FOR THE LICENSEE:

EX PARTE

BEFORE: JUDGE WRIGHT

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on October 15, 2013, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against 4936 SSP, Inc., License Number R-AP-SS-15465 (hereinafter "Licensee").

An Administrative hearing was held on Tuesday, July 8, 2014, pursuant to requisite and appropriate hearing notice. Despite notice of the hearing having been sent to the Licensee, the Licensee failed to appear. Therefore, the hearing proceeded *ex parte*.

The citation charges Licensee with violation of Section 493(1) of the Liquor Code, 47 P.S. §4-493(1), in that on September 6, 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. The Bureau conducted an investigation of the licensed premises which began on September 6, 2013 and ended on September 8, 2013. A notice of violation letter was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received at the licensed premises. A citation dated October 15, 2013 was sent to the licensed premises by certified mail, return receipt requested. That mailing was signed as received on October 17, 2013. The Office of Administrative Law Judge sent a citation hearing notice to the licensed premises on May 21, 2014 by certified mail, return receipt requested, and by first class mail (N.T. 16-17 and Exhibits B-1 and B-2).

2. An officer from the Bureau conducted an investigation of the licensed premises based upon a complaint of sales to a visibly intoxicated patron. As part of the investigation, the officer visited the premises on Saturday, September 6, 2013 arriving at approximately 11:50 p.m. (N.T. 5-6).

3. When the officer first entered the premises, he was approached by two security guards who were checking for patrons' identification. The officer presented identification and then approached the area of the bar. The officer spotted a patron who he suspected was intoxicated (N.T. 6).

4. When the officer entered the bar, there were approximately thirty patrons. He noted two security guards and two bartenders (N.T. 6-7).

5. The officer spotted a patron who had glassy and bloodshot eyes, who appeared to not be focused. The patron's eyes were slightly shut and he was partially in his chair and partially leaning on the bar for support. At the time, the patron had a shot glass and a pint glass, which appeared to be soda (N.T. 8).

6. The officer engaged in conversation with the man asking him how many drinks he had that night. The officer noted that the patron's speech was slurred and that he rambled. The patron indicated that he had been drinking double shots of Southern Comfort and he had already consumed six shots of Southern Comfort. The patron stated that he usually drinks about ten shots. The patron was speaking loudly and then his voice progressed to the point of screaming (N.T. 8-9).

7. Approximately halfway through the officer's visit, either late on Friday, September 6, 2013 or during the early morning hours of September 7, 2013, the patron requested another drink and the bartender served him a single shot of Southern Comfort. At that point, he looked at the officer and stated that it did not look like a double shot. He called another bartender over and asked him if it looked like a double shot. The second bartender took the glass, looked at it at eye level and put it back down. He then took the Southern Comfort bottle and filled it to what would be the equivalent of a double shot (N.T. 10-11).

8. The patron took a gulp of the drink, put his glass down and asked his girlfriend to go with him to smoke a cigarette. At that point, they walked outside for approximately five minutes. The bartender asked the officer if he wanted another drink. The officer requested a beer indicating that he didn't want any liquor and that he wouldn't want to be as f---d up as the other patron, referring to the individual who appeared to be intoxicated. The bartender responded laughing that the individual had been drinking double shots all night (N.T. 11-12).

9. When the patron returned, he engaged in loud conversation with the officer. The patron took a sip of the drink and the first bartender, named Mike, approached the patron and told him that he was cut off (N.T. 12-13).

10. The patron asked why, and Mike responded that it was a liability issue. The individual became enraged and stated that it was "f--king bulls--t" and told him to give him his tab so he could cash out. At that point, the patron was given a tab and he fumbled in his pocket for cards and cash. He left the cash and a dollar bill as a tip and stated that he was going to another bar. He was very unsteady on his feet. The officer did not follow the patron outside. He had noted that his girlfriend was with him and was not consuming alcoholic beverages. The girlfriend looked at the officer and stated that they should have cut him off three shots ago (N.T. 14).

CONCLUSIONS OF LAW:

All statutory prerequisites for notice to the Licensee were satisfied.

On September 6, 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 July 1, 2008, and has a record of prior violations as follows:

In Re:

Citation No. 09-0010X. \$100.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 20 and 31, 2008.

Citation No. 11-0129X. \$200.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
June 3 and October 14, 2010.

Citation No. 09-0342X. \$150.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
October 14, 2010.

Citation No. 11-0876X. \$250.00 fine.

1. Issued worthless checks in payment for malt or brewed beverages.
March 25, 2011.

DISCUSSION:

The Licensee did not appear to contest the cited charge. Based upon the testimony of the officer, which was uncontradicted, the Court concluded that the premises sold alcoholic beverages to a very visibly intoxicated patron. This is a dangerous practice which could result in not only liability for the Licensee, but harm to the patron or other people with whom the patron might come into contact.

A review of the Licensee's record indicates that there are no prior violations of this nature. Therefore, a monetary penalty 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.

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:

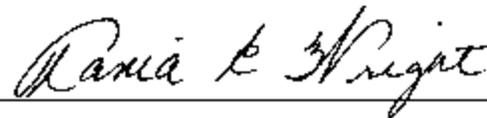
THEREFORE, it is hereby Ordered that Licensee, 4936 SSP, Inc., License Number R-AP-SS-15465, pay a fine of One Thousand Four Hundred Dollars (\$1,400.00) within twenty (20) days of the mailing date of this Order. In the event the aforementioned fine is not paid within twenty (20) days from the mailing 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 14TH day of MAY, 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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4936 SSP, Inc.
In Re: Citation No. 13-2065

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 business or trust 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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